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Davis-Bacon Construction Wage Determinations Manual of Operations

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
April 1986

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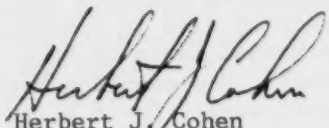
Construction Wage Determinations

Manual of Operations

U. S. Department of Labor
Employment Standards Administration
Wage and Hour Division
April 1986

FOREWORD

Regulatory changes and increased workload have highlighted the need for up-to-date guidelines for the development and issuance of Davis-Bacon wage determinations. This Manual has been developed to provide comprehensive information and technical procedures to promote uniformity and accuracy in the wage determination process. The use of this new resource will contribute to a more efficient and effective program of wage determinations.



Herbert J. Cohen
Deputy Administrator

ACKNOWLEDGEMENTS

The Davis-Bacon Construction Wage Determinations Manual of Operations was prepared under the direction of James L. Valin, Assistant Administrator for Program Operations. William F. Hahn and William R. Schriver were the principal authors. Planning and coordination were supervised by Dr. Alan L. Moss, Director of the Division of Wage Determinations. Editing and direction was provided by Raymond Kamrath, Chief, Branch of Construction Wage Determinations, Phillip Gloss, Branch Section Chief and Ronald W. Merten, Division Program Specialist.

Special appreciation is expressed to John R. Moore, Associate Dean for Research, The University of Tennessee, and Joyce Holloway of Construction Resources Analysis for their assistance in preparing the Manual. Recognition also is provided to the members of the Wage Determinations Manual Revision Work Group for their guidance and technical support. Representing Wage and Hour's National Office on the interagency panel were: David Flick, Wage and Hour Analyst, Division of Policy and Analysis, and Rae Glass, Branch Chief, Division of Contract Standards Operations. Input from the Employment Standards Administration, Wage and Hour Division Regional Offices was provided by Fran Barber, Wage Analyst, Philadelphia; James Reed, Regional Wage Specialist, Dallas; Donald Outland, Regional Wage Specialist, Atlanta; and Robert Henze, Regional Wage Specialist, Kansas City. Willis Nordlund, Director, Division of Program Development and Research; Kenneth Hoffmann, Project Director, Bureau of Labor Statistics; Gail Coleman, Deputy Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, and Gregory Taylor, Counsel for Legal Advice, Office of the Solicitor, provided valuable assistance. Department of Housing and Urban Development assistance was provided by Jane MacLane, Labor Relations Specialist, Washington, DC; William Poythress, Chief Labor Relations Branch, Atlanta Regional Office; Bernard Shriber, State Program Coordinator, Boston Regional Office, and Michael Akrouche, Labor Relations Staff Director, Columbus Ohio.

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PREFACE

A. Purpose and Use of the Manual. The development and distribution of this Manual represents part of a continuing effort by the Wage and Hour Division of the Employment Standards Administration (ESA) to increase its efficiency in administering the Davis-Bacon Act. The fundamental objective of the Manual is to prescribe guidelines, standards and techniques which will enhance the program's ability to issue timely and accurate prevailing wage determinations.

This Manual replaces earlier editions. It includes "how to" information on gathering, organizing, tabulating and analyzing data on wages and fringe benefits. It also includes a section on recently developed systems for survey planning and tracking. Special emphasis is given throughout the document on the importance of utilizing statistical procedures and practices that maximize objectivity and uniformity of approach. The goal is not only to strengthen technical performance in the wage determination process but to enhance upon the program's overall credibility.

The Manual is primarily intended as a working guide for employees of ESA assigned to the Davis-Bacon program. This includes staff members in the Washington, D.C. headquarters as well as personnel in the regional and area offices throughout the United States. It is also recognized that this guide may be used in the orientation and training of new employees in the program.

As the principal source of information on the procedures and practices to be followed for the collection of construction wage data and the issuance of wage decisions this document should appeal to other audiences as well. For example, this Manual should be of interest to contractors, union and association personnel, construction owners, and representatives of local, state and Federal government agencies. Copies of the Manual may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Washington, D. C. 20210.

B. Organization of the Manual. This Manual is organized into seven parts. Chapter I serves as an introduction. It outlines the Davis-Bacon Act, its purpose, history, and coverage. Chapter II examines the administration and enforcement of Davis-Bacon. It profiles the authority, organization and functions of the various units of the Department of Labor responsible for the program. The role of other organizations in Davis-Bacon is also discussed.

Chapter III explains and defines a number of the major concepts and terms used in data collection and wage determination functions under the Act. Chapter IV sets forth the process of determining the prevailing wages and fringe benefits in a given geographical area.

Chapters V and VI contain the guidelines, policies and recommended procedures for the collection and analysis of statistics on compensation levels in construction as well as for the issuance of wage determinations.

Chapter VII outlines the recently developed survey planning and tracking systems, including step-by-step procedures for maintaining and accessing the systems.

Appendix A consists of the various forms, schedules, and notification and transmittal letters used in the data collection and wage determination processes. Appendix B contains the names, telephone numbers and titles of key personnel in the National and Regional Offices assigned to the Construction Wage Determinations Program.

Regulations 29 CFR (Parts 1 and 5) issued by the Department of Labor under Davis-Bacon are reproduced in Appendix C. Included in Appendix D are All Agency Memorandums No. 130 and 131. These documents are to be used as guides for the determination of categories of construction in Davis-Bacon wage determinations.

Appendix E is a list of names and addresses of the various national organizations which are to be contacted whenever a survey is being conducted which may be of interest to them and their members.

CHAPTER I. DAVIS-BACON AND RELATED ACTS.

Introduction. The Davis-Bacon Act, as amended, requires that each contract over $2,000 to which the United States or the District of Columbia is a party - for the construction, alteration, or repair of public buildings or public works contains a clause setting forth the minimum wages to be paid to various classes of laborers and mechanics employed under the contract. Under the provisions of the Act, contractors or their subcontractors are to pay workers employed directly upon the site of the work no less than the "locally prevailing" wages and fringe benefits paid on projects of a character similar. The Act gives the Secretary of Labor authority to determine such local prevailing wage rates.

A. History of the Davis-Bacon Act. The Davis-Bacon Act was enacted in the depression year of 1931 for the purpose of protecting local wage rates on Federal construction projects. It was the first Federal prevailing wage law applying to nongovernment workers, and one of the first examples of Federal involvement in social and labor legislation. The objective was to use the economic power of government to encourage competition among employers in terms of efficiency, not in terms of depressed wages. Davis-Bacon was designed, and remains, a minimum wage law for the benefit of construction workers.

As originally enacted, the statute applied only to public buildings, leaving roads and heavy construction such as dams, power plants, and marine public works not covered. In addition, the wage rates to be paid were not determined prior to award of a contract, but rather were determined by the contractor. If there was a dispute over what the rate should be, the contracting officer would attempt to resolve it. Failing that, the matter would be referred to the Secretary of Labor for resolution.

This approach contained several pitfalls. There was no impartial system for determining what the wage rates should be. The dispute resolution mechanism was arbitrary and cumbersome. Contractors could be exposed to wage costs far in excess of that contained in their bids, or, on the other hand, receive windfall profits if the bid allowances for wages were significantly lower than actually occurred. Perhaps the most serious shortcoming of the

original law was the lack of any enforcement mechanism short of termination and debarment from future work.

After a short time it became evident that the original law needed to be substantially changed. On August 30, 1935, Congress amended the Act (PL 74-403). The Davis-Bacon Amendments of 1935 require that the Secretary of Labor predetermine the prevailing wage rates to be paid, and also require that these rates be included in the advertised contract specifications. The principle of "predetermination" was adopted to insure that the rates paid are in fact not less than the prevailing rate. In addition, the scope of the law was extended downward from contracts in excess of $5,000 to contracts in excess of $2,000 and outward to cover public works of all types as well as buildings, and to include painting and decorating contracts.

Provisions were added authorizing termination of contracts for violators, with the contractor held liable to the government for completion of the work, withholding of progress payments due for work performed, and debarment from future government work for three years. Clarifications were made in the definitions of trade classifications and, instead of the language calling for wages to be paid based on "work of a similar nature", the 1935 law called for them to be based on "projects of a character similar."

Since 1935, the basic provisions of Davis-Bacon have remained largely unchanged. The only substantive amendments were enacted in 1964 (PL 88-349) when the Act was modified to include fringe benefits such as medical or hospital insurance, pensions, vacation and holiday pay, and funding for training. This amendment required that the prevailing wage determined for federal or federally-assisted construction include the basic hourly rate of pay and the amount contributed by the contractor or subcontractor for bona fide fringe benefits (or the cost to them of such benefits).

B. Related Acts. Congress has extended labor standards coverage by adding prevailing wage provisions to scores of federal laws which assist construction projects through grants, loans, loan guarantees; insurance, as well as direct financing. Presently, approximately 60 statutes that involve Federally-assisted construction require payment of wages at rates predetermined by the Secretary of Labor. These Davis-Bacon Related Acts (DBRA) involve construction in such areas as health, housing, air and water

pollution, transportation, and revenue sharing. A list of the related statutes is included in Regulations (Part 1 and Part 5), reproduced in Appendix C.

C. Reorganization Plan No. 14 of 1950. To improve the uniformity and degree of protection afforded workers by the procurement agencies under the various Federal labor laws, including Davis-Bacon, the President proposed and the Congress accepted Reorganization Plan No. 14 (U. S. Code, Title 5, Sec. 113). This plan authorizes the Secretary of Labor to coordinate the administration of legislation relating to wages and hours on Federally financed or assisted projects.

Such administration is accomplished by prescribing standards, regulations, and procedures to govern the enforcement actions of the Federal agencies and by making such investigations as the Secretary of Labor deems desirable to assure consistent enforcement. However, the actual performance of day to day enforcement activities, normally including the investigation of complaints of violations, remains the duty of the respective agencies awarding the contracts or providing the Federal assistance. The objective of the Plan has been to facilitate more effective enforcement of labor standards.

D. Coverage of Davis-Bacon. Coverage extends to any contract in excess of $2,000 which is entered into with the United States or the District of Columbia for the construction, alteration and/or repair, including painting and decorating, of a public building or public work financed in whole or in part from Federal funds or financially assisted under any statute referencing Davis-Bacon. In addition a statute authorizing assistance either directly or by reference may require payment of Davis-Bacon prevailing wages. On the other hand, in situations where a project is funded under a number of Federal statutes, Davis-Bacon may apply to the project or portion of a project if any of the statutes authorizing a portion of the financial assistance requires payment of Davis-Bacon rates.

The geographic scope of the Davis-Bacon Act is limited, by its terms, to the fifty states and the District of Columbia. By the same token, the scope of each of the Related Acts is determined by the terms of the particular statute under which the Federal assistance is provided. For example, DBRA

would apply to a construction contract located in Guam or the Virgin Islands funded under the Housing and Community Development Act of 1974 , whereas the Davis-Bacon Act would not apply.

E. Rules and Procedures. The Davis-Bacon Act is brief and general in theme. (The amended version of 1935 contains only about 1,000 words.) The Department of Labor has developed detailed rules and procedures, including explanation of terms to help govern the operation and enforcement of the prevailing wage statute. Issued in the form of Federal Regulations, the rules and procedures are promulgated under the authority conferred upon the Secretary of Labor by Reorganization Plan No. 14 of 1950. (See Chapter I, (C)).

The Secretary of Labor has issued Regulations, Parts 1, 3, 5 and 7, under Title 29 of the Code of Federal Regulations (CFR). (The CFR is an annual codification of the general and permanent rules published in the Federal Register. The code is divided into 50 titles that represent broad areas subject to Federal regulation).

Part 1 deals with the procedures for the predetermination of prevailing wage rates.

Part 3 deals with recordkeeping and payroll information required under Section 2 of the Copeland Act. It further details the circumstances in which payroll deductions are permissible. (See Page 11)

Part 5 sets forth the various contract labor standard requirements, investigation procedures and reporting which must be followed by the agencies and the Department of Labor. It outlines the procedure for resolution of investigations disclosing violations. Part 5 also deals with the fringe benefit requirements of the Act including their determination. Part 5 also sets forth the regulations under the Contract Work Hours Safety and Standards Act (CWHSSA), discussed below.

Part 7 sets forth the procedures and practices to be followed in appealing final agency actions to the Wage Appeals Board of the Department of Labor. (Parts 1 and 5 are reproduced in Appendix C.)

This Manual focuses on "operational" procedures and techniques and should be read in conjunction with the regulations. It provides background material,

interpretations, and general operating procedures, as well as guidance to assist Regional and National Office personnel in the preparation and issuance of wage determinations.

CHAPTER II. ADMINISTRATION

Introduction. This section provides an overview of the organizational network that has been established in the Department of Labor to administer the Davis-Bacon and Related Acts. Also examined is the role of other government units in the operation of the determination process.

A. DOL Authority and Responsibility. The Davis-Bacon Act, as amended, assigns to the Secretary of Labor responsibility for predetermining wage rates and fringe benefits prevailing for the corresponding classes of laborers and mechanics employed on projects similar to the contract work in the local areas where the work is to be performed. As noted previously, Reorganization Plan No. 14 of 1950 directs the Secretary of Labor to prescribe appropriate standards, regulations, and procedures to assure coordination of the administration and consistency of enforcement of the labor standards provisions of the Davis-Bacon Act.

> "In order to assure coordination of administration and consistency of enforcement of the labor standards provisions of each of the following Acts (including Davis-Bacon) by the Federal agencies responsible for the administration thereof, the Secretary of Labor shall prescribe appropriate standards, regulations, and procedures, which shall be observed by these agencies, and cause to be made by the Department of Labor such investigations, with respect to compliance with an enforcement of such labor standards, as he deems desirable."

Therefore, the plan authorized the Secretary of Labor to coordinate the administration of legislation relating to wages and hours on federally financed or assisted projects by prescribing standards, regulations, and procedures to govern the enforcement activities of the various Federal agencies and by making such investigations as is deemed desirable to ensure consistent enforcement. The actual performance of day-to-day enforcement activities normally including the investigation of complaints of violations, remains the duty of the respective agencies awarding the contracts or providing the Federal assistance.

The prescribed functions of the Secretary, except those assigned to the Wage Appeals Board, have been delegated to the Deputy Under Secretary for Employ-

ment Standards (Secretary's Order 6-84, July 23, 1984). The Order specifies that the " . . . Deputy Under Secretary for Employment Standards is hereby delegated authority and assigned responsibility . . . for carrying out the employment standards policies, programs and activities of the Department of Labor, including those functions to be performed by the Secretary of Labor under:

> . . . The Davis-Bacon Act, as amended, and any laws now existing or subsequently enacted, providing for prevailing wage findings by the Secretary in accordance with or pursuant to the Davis-Bacon Act, as amended, 40 U.S.C. 276a - 276a-7; the Copeland Act, 40 U.S.C. 276c; Reorganization Plan No. 14 of 1950; and the Tennessee Valley Authority Act, 16 U.S.C. 831".

The functions assigned the Deputy Under Secretary of the Employment Standards Administration have, in turn, been delegated to the Administrator of the Wage and Hour Division. The Wage and Hour Division (W-H) has the responsibility for planning, directing and administering Davis-Bacon. While the contracting agencies have the primary day-to-day responsibility for enforcement of Davis-Bacon, W-H has enforcement responsibility in ensuring that prevailing wages and fringe benefits are paid in accordance with the provisions of the Davis-Bacon and Related Acts.

Included within this enforcement responsibility is the conducting of investigations regarding compliance with the statutes; settling, adjusting and adjudicating by informal means cases involving the payment of back wages; coordinating the enforcement activities of the various Federal agencies having labor standards enforcement responsibilities; requesting the withholding by such agencies from accrued contract payments or advances such sums as may be considered necessary to make required wage payments, or payments of liquidated damages under CWHSSA, or both; recommending the commencement of legal proceedings for the adjudication of such laws and regulations and adjudicating such violations and imposing sanctions. Such work also includes referring cases to Administrative Law Judges to resolve factual disputes; issuing rulings on legal issues; and initiating debarment actions.

Wage and Hour carries out its responsibilities under Davis-Bacon through its staff in the Washington, D.C. headquarters and in its 10 Regional Offices and 64 area offices throughout the United States.

B. National Office. Organizational charts for ESA and W-H are presented on pages 7 and 8. The Davis-Bacon wage determination program involves a coordinated effort by W-H's national office personnel and a nationwide field network under the jurisdiction of ESA Regional Administrators and Assistant Regional Administrators.

In this section, the focus is on W-H headquarters in Washington, D.C., with particular emphasis on those units of W-H with operational responsibilities.

(1) Office of the Administrator. The mission of this office is to plan, establish and administer a wide variety of labor standards programs, national in scope, under various delegated statutes providing minimum wage, prevailing wage, overtime, and other labor standards protections to covered workers. The Administrator also is to establish related regulations, interpretations, policies, and procedures to facilitate enforcement of, and compliance with, the provisions of this legislation.

Additionally, the Administrator is responsible for conducting a continuing program for obtaining and compiling wage rate information, the development of strategic plans and the development and execution of the agency's operating plans and budget.

Reporting to the Administrator are the Deputy Administrator, Assistant Administrator for the Office of Program Operations and Assistant Administrator for the Office of Policy, Planning and Review.

(2) Office of Program Operations (OPO). The Office is responsible for providing interpretive direction to a nationwide field staff concerning the administration and enforcement of the Fair Labor Standards Act (FLSA), Migrant and Seasonal Agricultural Worker Protection Act (MSPA), Service Contract Act (SCA), Public Contracts Act (PCA), the Davis-Bacon and Related Acts (DBRA), and Contract Work Hours and Safety Standards Act (CWHSSA).

As shown in Figure 2, four divisions, each with separate program responsibilities, report to OPO. Two of these organizations - the Division of Wage Determinations and the Division of Contract Standards Operations - have Davis-Bacon missions.

(3) Division of Wage Determinations. This unit directs and coordinates the determination and implementation of prevailing wage provisions under DBRA,

FIGURE 1

EMPLOYMENT STANDARDS ADMINISTRATION, DOL

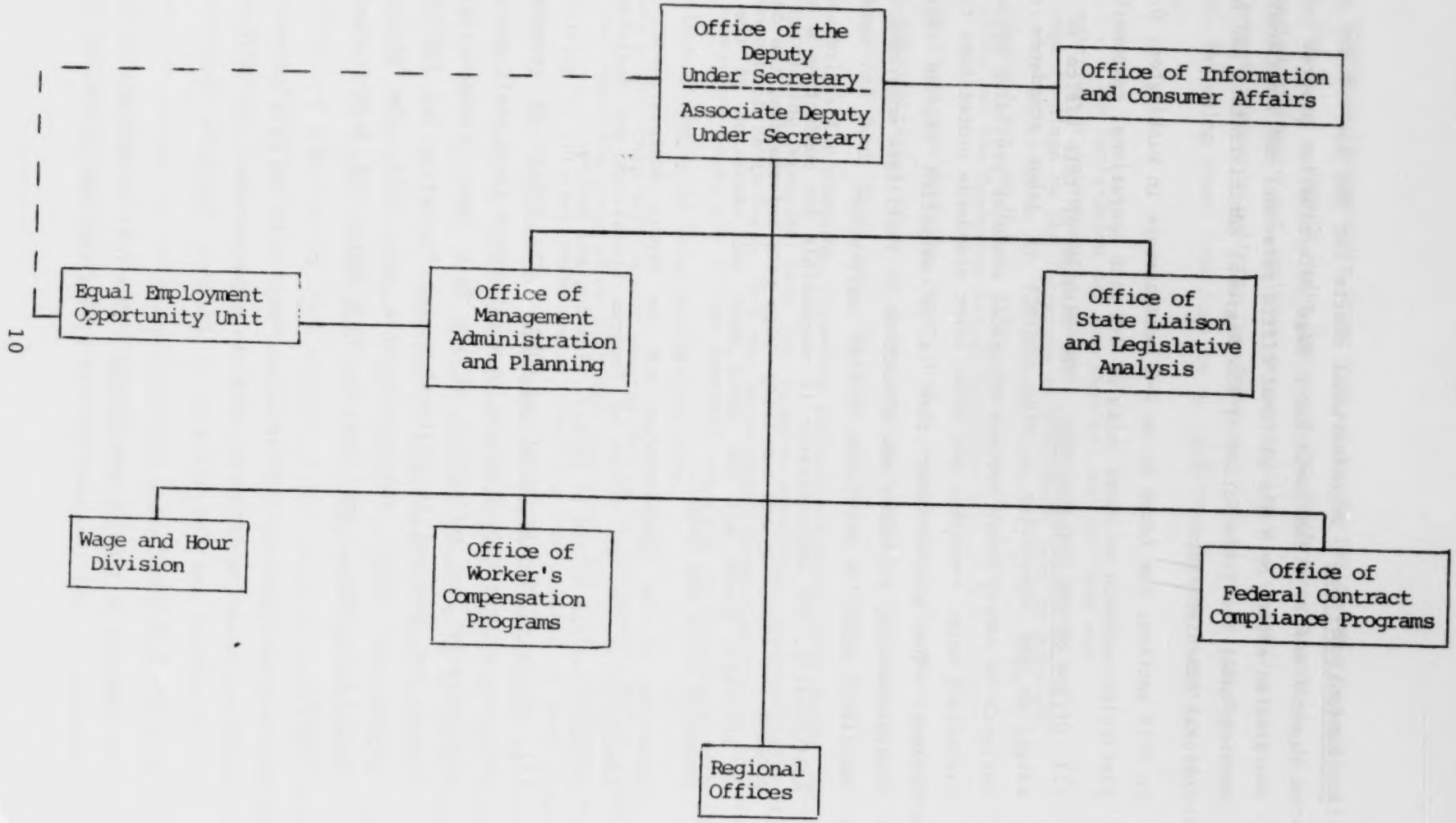
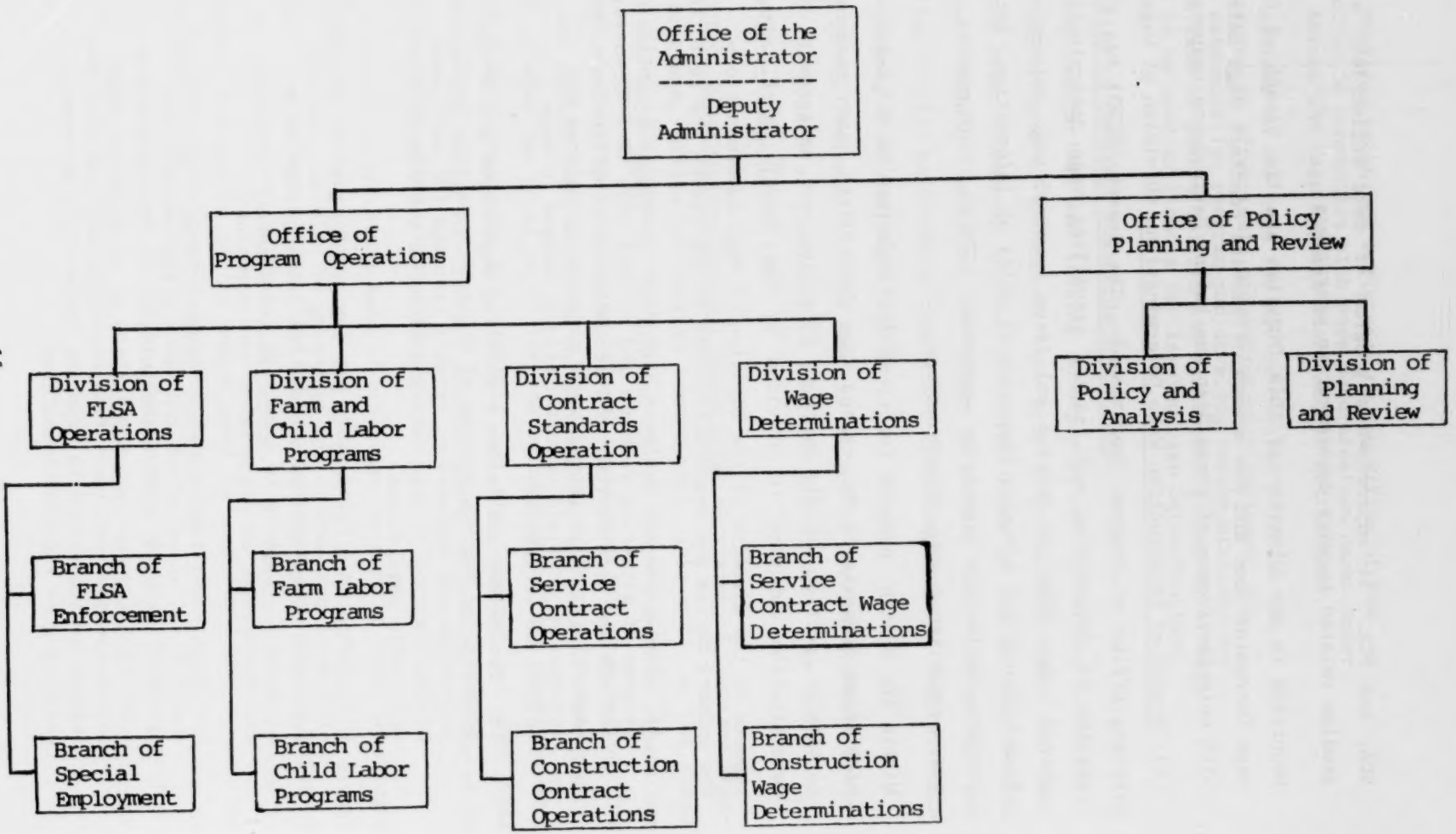

Office of the Deputy Under Secretary
Associate Deputy Under Secretary
Office of Information and Consumer Affairs
Equal Employment Opportunity Unit
Office of Management Administration and Planning
Office of State Liaison and Legislative Analysis
Wage and Hour Division
Office of Worker's Compensation Programs
Office of Federal Contract Compliance Programs
Regional Offices

FIGURE 2

WAGE AND HOUR DIVISION


Office of the Administrator
Deputy Administrator
Office of Program Operations
Office of Policy Planning and Review
Division of FLSA Operations
Division of Farm and Child Labor Programs
Division of Contract Standards Operation
Division of Wage Determinations
Division of Policy and Analysis
Division of Planning and Review
Branch of FLSA Enforcement
Branch of Special Employment
Branch of Farm Labor Programs
Branch of Child Labor Programs
Branch of Service Contract Operations
Branch of Construction Contract Operations
Branch of Service Contract Wage Determinations
Branch of Construction Wage Determinations

SCA, and PCA. It supervises a program of data collection, analysis and studies related to wage determination operations.

Reporting to the Director of this Division are the Branch of Construction Wage Determinations and the Branch of Service Contract Wage Determinations, with only the former of these Branches having Davis-Bacon responsibilities.

(4) Branch of Construction Wage Determinations (Division of Wage Determinations, Office of Program Operations). The Branch (BCWD) has the assigned mission of determining and issuing prevailing wage determinations as required under DBRA. To develop and issue required wage determinations, the Branch stores and accesses thousands of files of information, including wage surveys, collective bargaining agreements (CBA's), conformances, and previously established wage determinations.

Within the Branch, program functions are organized on a geographic basis - with three Supervisory Salary and Wage Specialists, each responsible for a particular section of the nation. Direction and management of the wage determination function is provided by the Branch Chief, who, in turn, reports to the Director of the Division of Wage Determinations.
The primary duties and responsibilities of the Branch are as follows:

(a) Researches and analyzes wage data: conducts a continuing program of gathering relevant and current wage data by survey methods and from sources of information for application to the wage determination process; and provides guidelines and instruction to field representatives engaged in wage collection activities.

(b) Determines and issues prevailing wage rates and fringe benefits for various classes of workers in various localities nationwide and approves or rejects requests for additional classifications to wage determinations in accordance with applicable regulations.

(c) Serves as a focal point for the identification and resolution of problems in the gathering of relevant, current wage data to be used as a basis for issuing wage determinations. Responds to inquiries regarding the accuracy and application of Davis-Bacon determinations.

(d) Maintains liaison with Government contracting agencies, contractors, associations and labor organizations, and provides technical advice and guidance on the uniform and consistent issuance and application of construction wage determinations; and identifies operating problems that may require modifications to existing cooperative agreements pertaining to wage determinations.

(e) Provides technical assistance to the Office of the Solicitor in connection with wage determination cases under DBRA before the Wage Appeals Board and in court cases.

(f) Advises on the need for new or revised policies and procedures to effectively and efficiently implement the wage determination program and develops interpretations and guidelines to assure uniform and consistent gathering of wage data to be used as a basis for issuing wage determinations.

(5) Division of Contract Standards Operations. This unit is charged with implementing regulations and issuing interpretations concerning administration and enforcement of provisions that provide prevailing wage, overtime, and related labor standards applicable to employees of contractors covered by various Federal contract or grant statutes; and overseeing and coordinating overall enforcement functions, including those of Federal/State agencies, under the delegated statutes.

Reporting to the Division Director are the Branch of Service Contract Operations and the Branch of Construction Contract Operations. The latter unit has Davis-Bacon responsibilities.

(6) Branch of Construction Contract Operations (Division of Contract Standards Operations, Office of Program Operations). This unit is the focal point for the enforcement of the DBA and the DB labor standards provisions of a number of statutes authorizing federal assistance for construction. The statutes are collectively known as the Davis-Bacon and Related Acts (DBRA). This unit is also the focal point for the enforcement of the Contract Work Hours and Safety Standards Act (CWHSSA) and the Copeland Act that also relate to the employment of laborers and mechanics on federally-financed or federally-assisted construction work.

CWHSSA, it should be noted, as amended effective January 1, 1986, sets forth the requirements on Federal work for the payment of overtime hours in excess of 40 hours in a workweek. The Copeland Act regulates payroll deductions on federal or federally assisted construction. It requires contractors to submit weekly statements on the wages paid to each employee during the preceding week. The "Anti-Kickback" section of this statute makes it punishable by a fine up to $5,000 or imprisonment up to 5 years or both to induce any person working on a Federally-funded or assisted construction

project to "give up any part of the compensation to which he is entitled under his contract of employment".

The work of the Branch is primarily directed to reviewing and processing refusal to pay DBRA/CWHSSA field cases for recovery of back wages and reviewing and processing potential debarment cases. The Branch reviews all W-H field and contracting agency enforcement reports for uniformity and consistency in the interpretation and application of established guidelines and procedures. Among other major functions of the Branch of Construction Contract Operations are the following:

(a) Provides oversight to contracting agencies administering the Davis-Bacon and Related Acts; serves as liaison with representatives of other DOL and Federal agencies regarding general interpretative and enforcement questions as they affect individual cases or specific enforcement issues resulting from an investigation or specific enforcement activity; and identifies operating problems that may require modifications to established policies and procedures which affect relationships with other agencies.

(b) Prepares DBRA/CWHSSA cases for review of the Solicitor for possible litigation.

(c) Advises on the need for new or revised policies and regulations to effectively and efficiently administer and enforce the statutes assigned; and develops interpretations and guidelines to assure uniform and equitable enforcement of the statutes assigned, in conformance with applicable FLSA interpretations and regulations.

(d) Prepares educational, promotional and explanatory materials; and prepares responses to inquiries concerning program enforcement guidelines and interpretations.

(7) Office Of Policy, Planning and Review (OPPR). This Office, through its Division of Policy and Analysis develops, formulates and issues new and updated program policies, regulations, directives and procedures; conducts analyses and evaluations of regulatory options for general impact, effectiveness, reporting requirements and recordkeeping burdens; communicates operational policies and procedures to the W-H field staff; develops specifications for new or amended legislation needed to improve program administration; and analyzes legislation and administrative proposals to determine their impact on the DBRA and other W-H programs. Guidelines and procedures for the disclosure of W-H documents under the Freedom of Information Act (FOIA) and Privacy Act are developed and implemented within this Office. The OPPR Division of Planning and Review

develops W-H's planning and budgetary reports and measures, and evaluates program accomplishments through the Accountability and Review Program.

C. Regional Offices. The primary responsibility for collecting and compiling data on locally paid prevailing wage rates rests with ESA-WH personnel located in the 10 Regional Offices. Figure 3 provides a schematic picture of a prototype ESA regional organization. The Assistant Regional Administrator (ARA) for Wage-Hour is the Executive Manager for Davis-Bacon and Related Acts, Fair Labor Standards Act, Service Contract Act, Copeland Act, the Migrant and Seasonal Agricultural Worker Protection Act and the other acts administered by Wage-Hour.

In each of the ESA/WH Regional Offices a Wage Specialist serves as the responsible authority for Davis-Bacon enforcement and wage surveying. This official has supervisory responsibility for the regional wage determinations staff, typically consisting of two Wage Analysts. These professionals conduct Davis-Bacon wage surveys and compile wage rate information. The Specialist plans, monitors, and evaluates regional survey activity. In complex or controversial surveys, the Wage Specialist may participate in collecting wage information. Wage Specialists also spend substantial time guiding the regionwide enforcement of Davis-Bacon and other labor standards programs.

The 64 Wage and Hour Area Offices are engaged principally in enforcement activities and only rarely become involved in Davis-Bacon surveys. (For a listing of the regional wage staff and their telephone numbers, see Appendix B).

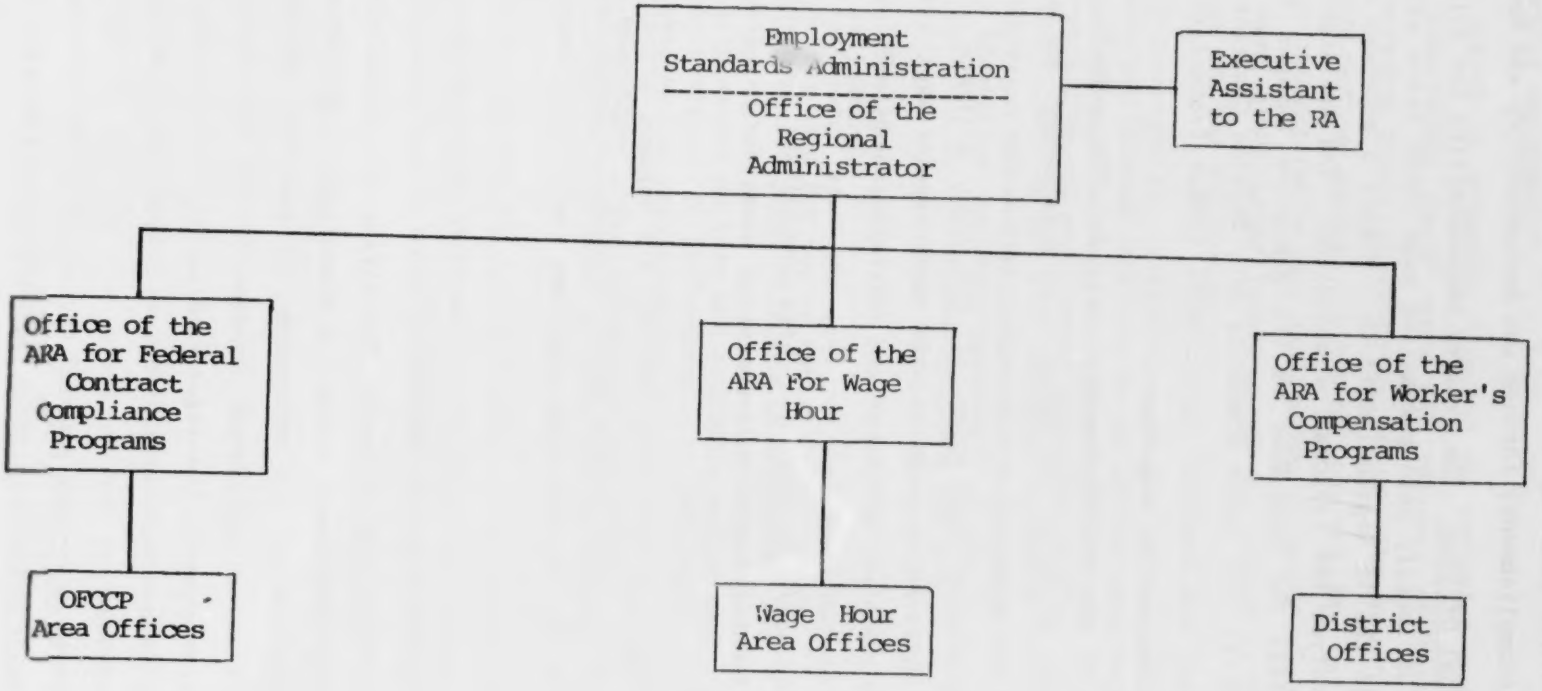
D. Other Agencies and Organizations

(1) Solicitor of Labor. The Office of the Solicitor has responsibility for providing legal advice and assistance to ESA/WH personnel relative to the administration and enforcement of the DBRA statutes. The Solicitor, through a subordinate staff of attorneys in Washington, D.C. and 16 field offices, represents the Department in cases involving the labor standards statutes before Administrative Law Judges, the Wage Appeals Board, and the civil courts.

(2) Wage Appeals Board. Reviews of enforcement actions and wage rate determinations are handled by the Wage Appeals Board. This review panel was

FIGURE 3

EMPLOYMENT STANDARDS ADMINISTRATION PROTOTYPE REGIONAL ORGANIZATION


Employment Standards Administration
Office of the Regional Administrator
Executive Assistant to the RA
Office of the ARA for Federal Contract Compliance Programs
Office of the ARA For Wage Hour
Office of the ARA for Worker's Compensation Programs
OFCCP Area Offices
Wage Hour Area Offices
District Offices

established by the Secretary of Labor in 1963 to decide, in its discretion, appeals concerning questions of fact and law related to final decisions of the Department concerning:

- o Controversies concerning the payment of prevailing wage rates or proper classifications which involve significant sums of money, large groups of employees, or novel or unusual situations;
- o Wage determinations issued under DBRA;
- o Debarment cases arising under 29 CFR, Part 5, and
- o Cases involving the assessment of liquidated damages under the Contract Work Hours and Safety Standards Act.

The Board consists of three members, one of whom is designated chairman. The members are appointed by the Secretary and a majority vote of the Board is necessary for decision, except that a decision to hear any appeal may be by one member. The Board can act only as fully and finally as the Secretary of Labor concerning the matters within its jurisdiction. For example, the Board lacks authority to award petitioners money damages. The rules prescribed in 29 CFR, Part 7, "Practice Before Wage Appeals Board", govern the proceedings of the Board. Chapter VI of this manual outlines the procedure for appealing a wage determination.

(3) Contracting Agencies. The contracting agencies are responsible for insuring that the appropriate wage determination is incorporated in bid solicitations and contracts and for designating the work to which each wage determination applies. Such wage determinations are obtained by selecting the proper published general wage determination or by requesting a project wage determination from W-H. A project wage decision is issued at the specific request (SF-308) of a Federal contracting agency (general wage determinations may be issued upon the specific request of a Federal agency or by W-H on the basis of its own assessment of need).

As noted earlier, the routine enforcement and compliance responsibility under DBRA also rests with the Federal contracting agencies. Under current regulations, covered contractors and subcontractors are required to submit to the contracting agency weekly, a certified payroll on covered contract work, together with a statement certifying compliance with the Davis-Bacon and Copeland Acts. The agencies are to regularly review the certified payrolls and to conduct investigations, as needed, to assure compliance with

the labor standards provisions - with complaints of alleged violations being given priority. To assist W-H in administering the Davis-Bacon program, the contracting agencies also are directed to provide the Division with semi-annual reports on their enforcement activities. The Regulations, Part 5, describe the enforcement, compliance and investigation report responsibilities of the agencies (see Appendix C).

In accordance with Section 1.4 of the Regulations, the agencies at the beginning of each fiscal year are to furnish W-H, to the extent practical, a general outline of their proposed construction programs for the coming year indicating the estimated number of projects for which wage determinations will be required, the anticipated types of construction, and the localities of construction. All Agency Memorandum No. 144, December 27, 1985, highlights the importance of this requirement and provides for submittal of this information.

CHAPTER III. DAVIS-BACON CONCEPTS AND DEFINITIONS

Introduction. Successful administration of the wage determination function requires a thorough understanding of the basic concepts and terms embodied in DBRA and the regulations. In the following section, definitions and explanations are presented to provide a basic understanding of elements inherent in collecting wage payment data and issuing prevailing wage determinations.

A. Construction Activity Covered. Davis-Bacon applies to every contract exceeding $2,000 to which the United States or the District of Columbia is a party "for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works." The word "works" in the term "public works" refers to improvements, such as buildings, canals, or roads, rather than to progress or activity. (The Regulations 29 CFR 5.2 contain additional information on the terms "building" and "work").

It is not necessary that the Federal government fund the construction for DBRA to apply. For example, contracts for construction activity with a Federal interest through ownership participation, loan guarantees, etc., may be sufficient to bring about the application of the prevaiiing wage statutes.

In some instances a Government agency (or a State or political subdivision thereof) may perform construction work under what is generally known as "force account". In essence, this is a "do-it-yourself" type of construction - the agency or grant recipient decides not to contract out the work but actually performs it "in-house" with its own employees. Such work is not subject to DBRA/CWHSSA, except under statutes not limiting coverage to employees of contractors or subcontractors such as the Public Works Employment Act of 1977 and the U.S. Housing Act of 1937 and the Housing Act of 1949. This is true even though - in the case of loans or grants - the lender or grantor may provide as a condition that the construction be performed in accord with DBRA/CWHSSA stipulations and pay requirements. However, that part of the work not done under "force account" but contracted out is subject to DBRA/CWHSSA in the usual manner. Coverage also has not

been asserted over the operation and/or routine maintenance of facilities. Such activity is not covered by DBRA unless it is in the nature of painting or repair.

Also, outside the scope of DBRA are contracts with bona fide material suppliers or with manufacturers to produce, supply or deliver items to the construction site. However, if a materialman or supplier, manufacturer or carrier performs work directly on the project site or undertakes to perform a portion of the contract as a subcontractor, such as by establishing a batching plant, barrow pit, or similar facility in the vicinity of the project and dedicated exclusively or almost exclusively to the project, his mechanics and laborers are subject to a W-H wage rate determination in the same manner as those employed by any other contractor or subcontractor. (See Section C of this Chapter).

B. Worker Coverage. Provisions of the Act require the determination of ". . . the minimum wages to be paid various classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State in which the work is to be performed . . ."

(1) Laborers and Mechanics. Section 5.2 (m) of the Regulations defines the term "laborer" or "mechanic" to include "at least those workers who use tools or who are performing the work of a trade, as distinguished from mental or managerial." (Representative mechanic and laborer classifications are listed on the Survey Transmittal Letter included in Appendix A, p. 99.)

Section 5.5(a)(1) of the regulations stipulates that the laborers and mechanics are to be paid " . . . the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill . . . " (emphasis furnished).

(2) Apprentices and Trainees. These are defined in 29 CFR 5.2. "Apprentice" refers to ". . . a person employed and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the

program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice."

Information on wage rates paid to apprentices is not solicited nor do the wage determinations issued include apprentice classifications. Similarly, their addition through the additional classification procedure (conformance) is not necessary or appropriate.

Trainee means " . . . a person registered in a construction occupation under a program which has been approved in advance by the U. S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which have been so certified by that Administration, or a person who has been certified by the Secretary of Transportation under the Federal Highway Act of 1985 as a trainee." Wage rate determinations issued by W-H do not include trainee classifications.

In the event employees reported as apprentices or trainees on a covered job are found not to be properly registered within the meaning of the Regulations and the contract stipulations, they are entitled to be compensated as are any other laborers and mechanics employed on the job (regardless of the work classifications which may be listed on the submitted payrolls and regardless of their level of skill), based on the kind or classification of work they actually performed.

(3) Working Foremen. Data are not collected for working foremen. DBRA does not apply to (and therefore survey data are not collected for) workers whose duties are primarily administrative, executive or clerical, rather than manual. However, the regulations (5.2)(m) prescribe that working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties are laborers and mechanics for the time so spent, provided they do not qualify as exempt executive employees under Part 541 of 29 CFR. (See Section 541.115.)

(4) Helpers. The helper classification can be approved for use in a wage determination only when certain criteria are present: 1) the use of helpers is an established prevailing practice; 2) the duties of the helper must be clearly defined and distinct from the duties of the journeyman classification; 3) their duties are distinct from the duties of the labor-

er, and, 4) the "helper" is not synonymous with "trainee" in an informal training program.

C. Contractual Arrangements. The Davis-Bacon Act provides that the contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work minimum wages which are based upon those determined by the Secretary of Labor to be prevailing in the area.

The statutory language of the Davis-Bacon Act makes it clear that Congress intended that individuals performing the work of laborers and mechanics on the construction site be paid the prevailing wage rate " . . . regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics . . ." Therefore, when officers/owners of a subcontractor corporation, partnership, or proprietorship, are themselves performing the work of laborers and mechanics, they are subject to the prevailing wage provisions and wage data on them are solicited by W-H through its Davis-Bacon wage surveys.

(1) Prime/General Contractor. While the terms general contractor and prime contractor are sometimes used interchangeably, the distinction is ordinarily based on the relationship to the project owner. The general contractor has primary responsibility for the work required to complete the construction project. Usually, such work is accomplished through the award and coordination of subcontracts supervised by the general contractor. This responsibility extends from the beginning of construction until the project is completed and turned over to the project sponsor. Even where work is subcontracted, the "general" remains responsible to the project sponsor for performance of the general contract.

For very large projects, the project sponsor may choose to select bids and award separate contracts for selected kinds of work, e.g., elevator installation or hi-tech electrical work. Such contracts are called "prime" contracts. In such cases, the project may consist of a general contract plus one or more prime contracts. The sum of the values of these contracts will represent the total value of the project.

(2) Subcontractor. The subcontractor has a contractual agreement with the project's general or prime contractor. On a typical project, most employees working on the job will be employees of subcontractors. The subcontractors usually perform selected kinds of construction work, e.g., electrical, carpentry, roofing, plumbing, etc. They are sometimes referred

to as "specialty trade contractors." Occasionally, a subcontractor will choose to perform some but not all of the work required by the subcontract, and will further contract (lower-tier subcontract) to other employers.

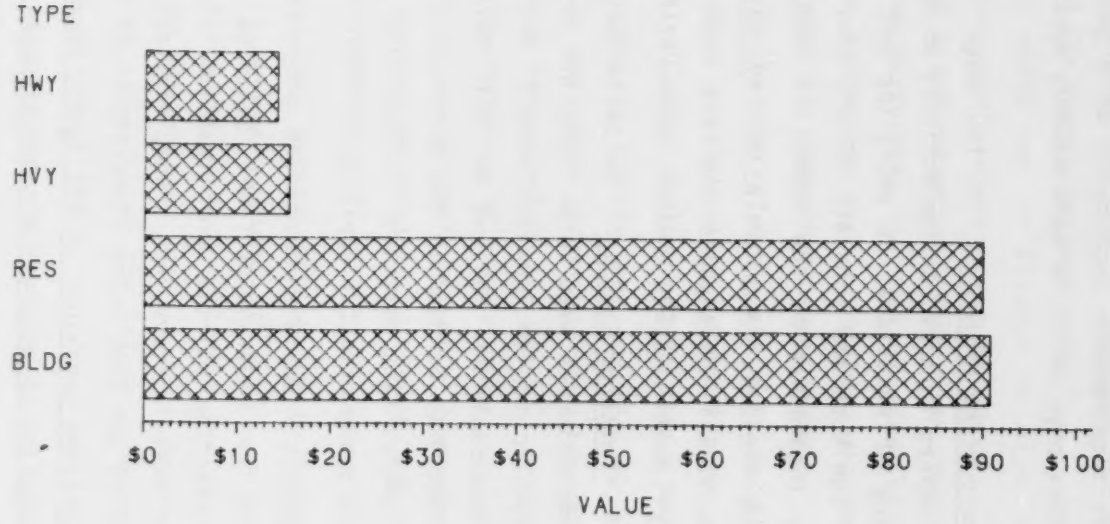
Whether or not the employees who perform construction-type work in connection with a Federal or Federally-assisted project will be covered by the labor standard laws applicable to such projects will depend upon the nature of the contract involved and the work performed thereunder. All labor standards requirements applicable to a general or prime contract are by their terms required to be made equally applicable to any subcontract.

D. Construction Projects. In the wage determination process the term project refers to construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work away from the site of the work and consists of all construction necessary to complete a facility regardless of the number of contracts involved so long as all contracts awarded are closely related in purpose, time and place. For example, demolition or site clearing work preparatory to construction is considered a part of the project under Davis-Bacon.

(1) Character Similar. The Davis-Bacon Act, as amended, requires the predetermination of wage rates which are prevailing on projects of a "character similar to the contract work." W-H has prepared "guidelines" (All Agency Memoranda No. 130 and No. 131, March 17, 1978, and July 14, 1978, respectively) to be used in the development of wage rate determinations and by the contracting agencies in selecting the proper schedule(s) of wage rates and procedures for applying multiple schedules.

As a general rule, W-H identifies projects by end use type and classifies them into four major categories: Building, Residential, Heavy, and Highway. Data collection efforts are organized along these lines, i.e., building surveys, heavy surveys, etc., and, similarly, wage determinations are issued for each of the four major classifications of projects. Note, however, that the guidelines contained in All Agency Memoranda No. 130 and 131 concerning classification of projects are not binding. When the nature of a project is not clear, it is necessary to look at other considerations as well, with foremost consideration given to area practice. Figure 4 shows the dollar value of contracts for each of the major construction types for 1984, as measured by the F.W. Dodge Division of McGraw-Hill Information Systems Co.

FIGURE 4
VALUE OF CONTRACTS, BY MAJOR CONSTRUCTION CATEGORY, 1984
(UNIT: BILLIONS OF DOLLAR)



Source: CRA Analysis of
F. W. Dodge data

In instances where prevailing local practice for a specific type of construction would be inappropriate to the use of the standard categories, W-H issues wage schedules for more specific categories of construction This use of subcategories is restricted to the "heavy" classification of construction, a catch-all category. For example, separate heavy schedules have been issued on occasion for dams, water and sewer line projects, flood control projects, dredging, channel stabilization, river work, shipbuilding, water treatment plants, and well drilling. (See Chapter IV(C) "Area Practice Considerations").

In determining the appropriate schedule to issue, W-H considers wages being paid on analogous projects as an identification of the proper category. It also applies the principle put forth by the Wage Appeals Board (WAB Case No. 77-23) that wages are only one indication of the appropriate category of construction. It is also necessary to look at other characteristics of the project including the construction techniques, the material and equipment being used on the project, the type of skills called for on the project, and other similar factors which would indicate the proper category of construction. Particular care is necessary in determining the appropriate schedule to be applied to water and sewage treatment plants and similar projects which have characteristics of both heavy and building construction. See e.g., the decision of the Wage Appeals Board in Yuma Desalting Plant, WAB Case No. 84-23 (January 23, 1985).

The purpose of the wage schedule is to reflect wage rates being paid in the local area. In the great majority of cases this can be accomplished within the framework of the four major categories of construction. These classifications are defined here with illustrative listings of the kinds of projects that are generally included within the classifications. (See Memoranda 130 and 131 in Appendix D).

(a) Building Construction. Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. It includes all construction of such structures, the installation of utilities and the installation of equipment, both above and below grade level as well as incidental grading, utilities and paving, unless there is an established area practice to the contrary. Additionally, such structures need not be "habitable" to

be building construction. The installation of heavy machinery and/or equipment may not change the project's character as a building. (See Yuma Desalting Plant, WAB Case No. 84-23 (January 23, 1985).)

Alterations and additions to nonresidential buildings
Apartment buildings (5 stories and above)
Arenas (enclosed)
Auditoriums
Automobile parking garages
Banks and financial buildings
Barracks
Churches
Hospitals
Hotels
Industrial buildings
Institutional buildings
Libraries
Mausoleums
Motels
Museums
Nursing and convalescent facilities
Office buildings
Out-patient clinics
Passenger and freight terminal buildings
Police stations
Post offices
City halls
Civic centers
Commercial buildings
Court houses
Detention facilities
Dormitories
Farm buildings
Fire stations
Power plants
Prefabricated buildings
Remodeling buildings
Renovating buildings
Repairing buildings
Restaurants
Schools
Service stations
Shopping centers
Stores
Subway stations
Theaters
Warehouses
Water and sewage treatment plants (building only)

(b) Residential Construction. Residential projects for Davis-Bacon purposes are those involving the construction, alteration, or repair of single family houses or apartment buildings of no more than four (4) stories in height. This includes all incidental items such as site work, parking areas, utilities, streets and sidewalks, unless there is an established area practice to the contrary.

Town or Row houses
Apartment buildings (4 stories or less)
Single family houses
Mobile home developments
Multi-family houses
Student housing

For Davis-Bacon purposes the exterior height of residential buildings in terms of stories is a primary consideration. Therefore, when there is a question regarding the distinction between "residential" and "building", the following criteria will apply in order to determine a residential building's

height; (see WAB Case No. 85-11, 12/23/85, St. Francis Hospital).

First story (First Floor)

- A lowermost story is considered a first story (floor) if it is a) primarily above exterior grade on one or more sides, and b) contains at least 50% living accomodations or related nonresidential uses (laundry space, recreation/hobby rooms, commercial use, and/or corridor space).
- A lowermost story is considered a first story (floor) without regard to a percentage test if it is primarily above ground on two or more sides.
- A lowermost story is considered a first story (floor) if it contains the main entrance to the building.
- A lowermost story is considered a first story (floor) without regard to exterior grade if it is used for apartment space in a way substantially similar to the upper floors.

Basement

- Stories below grade used for storage, parking, mechanical systems/equipment, etc., are considered basement stories which are not used in determining a building's height.

Attic

- An attic is unfinished space located immediately below the roof. Such space is not used in determining a building's height even if used for storage purposes.

Half-Story

- A half-story over the building's fourth story would preclude a residential classification. A half-story is a story finished as living accomodations located wholly or partially within the roof frame with floor space at least half as large as the story below. (Space with less than 5 feet clear headroom shall not be considered as floor area.)

Top Story

- The top story, not finished for living accomodations, between the uppermost floor and the ceiling or the roof above, with floor space as large as the story below, is considered a story for purposes of determining a building's height.

(c) Heavy Construction. Heavy projects are those that are not properly classified as either "building", "highway", or "residential". Unlike these classifications, heavy construction is not a homogenous classification. Because of its catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules issued.

Antenna towers
Bridges (major bridges designed for commercial navigation)
Breakwaters
Caissons (other than building or highway)
Canals
Channels
Channel cut-offs
Chemical complexes or facilities (other than buildings)
Cofferdams
Coke ovens
Dams
Demolition (not incidental to construction)
Dikes
Docks
Drainage projects
Dredging projects
Electrification projects (outdoor)
Flood control projects
Industrial incinerators (other than building)
Irrigation projects
Jetties
Kilns
Land drainage (not incidental to other construction)
Land leveling (not incidental to other construction)
Land reclamation
Levees
Locks, waterways
Oil refineries
Pipe lines
Ponds
Pumping stations (prefabricated drop-in units)
Railroad construction
Reservoirs
Revetments
Sewage collection and disposal lines
Sewers (sanitary, storm, etc.)
Shoreline maintenance
Ski tows
Storage tanks
Swimming pools (outdoor)
Subways (other than buildings)
Tipples
Tunnels
Unsheltered piers and wharves
Viaducts (other than highway)
Water mains
Waterway construction
Water supply lines (not incidental to building)
Water and sewage treatment plants (other than buildings)
Wells

(d) Highway Construction. Highway projects include the construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction.

Alleys
Base courses
Bituminous treatments
Bridle paths
Concrete pavement
Curbs
Excavation and embankment (for road construction)
Fencing (highway)
Grade crossing elimination (overpasses or underpasses)
Parking lots
Parkways
Resurfacing streets and highways
Roadbeds
Roadways
Shoulders
Stabilizing courses
Storm sewers incidental to road construction
Street Paving

Guard rails on highway
Highway signs
Highway bridges (overpasses; underpasses; grade separation)
Medians

Surface courses
Taxiways
Trails

(e) Multiple Categories. In some cases a project includes construction items that in themselves encompass different categories of construction. Generally, a project is considered mixed and a "multiple schedule" issued if the construction items are substantial in relation to project cost -- more than 20 percent. Only one schedule is issued if construction items are "incidental" in function to the over-all character of a project (e.g., paving of parking lots or an access road on a building project), and if there is not a substantial amount of construction in the second category. Such determinations may be influenced by relevant area practices (See Section C, Chapter IV).

Note, however, that 20 percent is a rough guide. For example, when a project is very large, items of work of a different character may be sufficiently substantial to warrant a separate schedule even though these items of work do not amount to 20 percent of the total project cost.

Contracting agencies have the responsibility to advise contractors on the application of multiple wage schedules issued by the Wage and Hour Division or obtained by the agency from the Federal Register.

(2). Site of the Work. A basic characteristic of the construction industry is the continual shift in the site of employment. The Davis-Bacon Act provides that prevailing wages are to be paid to ". . . all mechanics and laborers employed directly upon the site of the work . . . " (emphasis furnished). The regulations 29 CFR 5.2(1) define the site of work as "...limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed. . ." and other adjacent or nearby property used in the construction, as explained below.

Fabrication plants, mobile factories, batch plants, barrow pits, job headquarters, tool yards, etc. are part of the "site of work" provided they are dedicated exclusively, or nearly so, to performance of the contract or

project, and are so located in proximity to the actual construction location that it would be reasonable to include them.

On the other hand, 29 CFR 5.2(b)(1) of the regulations stipulates that not included in the site of work are ". . . permanent home offices, branch plant establishments, fabrication plants, and tool yards of a contractor or subcontractor whose locations and continuance in operations are determined wholly without regard to a particular Federal or federally assisted contract or project. In addition, fabrication plants, batch plants, barrow pits, job headquarters, tool yards, etc., of a commercial supplier or materialman which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the "site of work". Such permanent, previously established facilities are not a part of the "site of the work", even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

Certain related acts, including the U. S. Housing Acts of 1937 and 1949, cover all workers employed in the "development" of the project without restriction to the site of the work.

E. Prevailing Rates. The advertised specifications for every contract in excess of $2,000 to which the United States or the District of Columbia is a party for construction, alteration and/or repair are required to contain a provision stating the minimum wages to be paid various classes of laborers and mechanics. These rates are to be based upon the wages that the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the area in which the work is to be performed.

The regulations, 29 CFR 1.2(a)(1) define "prevailing wage" as . . . "the wage paid to the majority (more than 50 percent) of the laborers or mechanics in the classification on similar projects in the area during the period in question. If the same wage is not paid to a majority of those employed in the classification, the 'prevailing wage' shall be the average of the wages paid, weighted by the total employed in the classification." (emphasis furnished)

The regulations, 29 CFR 5.2(p) further define wages as ". . . the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected."

The 1964 amendment to the Davis-Bacon Act which expanded the meaning of "wages" to include fringe benefits enumerated the following fringes as bona fide and falling within the term "wages": medical or hospital care, pensions or retirement or death payments, compensation for injuries or illness resulting from occupational activity; or insurance to provide any of the foregoing . . unemployment benefits, life insurance, disability and sickness insurance, or accident insurance . . vacation and holiday pay . .defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits . . ." Fringe benefits as defined by the Act and the regulations do not include benefits required by other Federal, State, or local law, e.g., unemployment insurance (UI) contributions and Social Security.

(1) Peak Week. In determining prevailing wages W-H utilizes a "peak week" survey concept to ensure that wage and fringe benefit data obtained from employers reflects a payroll period during which the greatest number of workers in each classification are used on the project (employed by general, prime, or subcontractors). The survey solicits the number of employees paid at each given rate during the peak week.

F. Determination of Wage Rates. The Davis-Bacon and Related Acts provides for the determination of the minimum wage and fringe benefits to be paid various classes of laborers and mechanics employed on federally funded construction projects. Responsibility for measuring prevailing rates and the issuance of wage determinations rests with Wage and Hour's Branch of Construction Wage Determinations.

(1) Wage Determinations. A "wage determination" is the listing of wage and fringe benefit rates for each classification of laborers and mechanics, which the Administrator has determined to be prevailing in a given area and type of construction. Wage and Hour issues two types of wage

determinations - general determinations, also known as area determinations, and project determinations. The term "wage determination" is defined in the regulations, 29 CFR 5.2(q) as including not only the original decision but ". . . any subsequent decisions modifying, superseding, correcting, and otherwise changing the provisions of the original decision."

(a) General Wage Determinations. Such determinations are published in the publication General Wage Determinations Issued Under the Davis-Bacon and Related Acts, with notice in the Federal Register and reflect those rates determined by W-H to be prevailing in a specific geographic area for the type of construction described. The general wage decisions contain no expiration date and remain in effect until modified, superseded, or withdrawn.

General wage determinations are usually issued whenever the wage patterns for a given location, for a particular type of construction, are well settled and it appears there will be a recurring need for determined rates.

If a contracting agency has a proposed construction project to which a general determination would be applicable, the published determination may be used by the contracting agency without consulting the Department of Labor. As of 1985, about one-half of the counties in the United States were covered by general wage determinations for building construction. General determinations for highway construction applied to nearly all areas and, as for heavy, approximately three-quarters of the counties were encompassed by general wage determinations. Few general determinations are issued for residential construction.

(b) Project Wage Determinations. These are issued at the specific request of a contracting agency; are applicable to the named project only; and expire 180 calendar days from the date of issuance unless an extension of the expiration date is requested by an agency and approved by the Administrator of the Wage and Hour Division. If such a determination is not used in the period of its effectiveness, it is void unless an extension is granted by the Administrator. Project determinations are issued in response to contracting agencies submitting an SF-308 (Request for Determination and Response to Request). This form is reproduced in Appendix A, p. 111.

(c) Installation Wage Determinations. These decisions are project type wage determinations issued to a contracting agency on a request basis. They are generally issued for large military installations involved in the letting of a number of construction contracts in order to eliminate the issuance of many individual determinations. As with project determinations as a whole, installation determinations are not issued in areas covered by a general determination.

(d) Special Project Decisions. Such decisions are issued to a contracting agency that has failed to include the required wage decision in the contract specifications. A special project determination will reflect the rates effective on the date of contract award and will be retroactive to that date. In the case of contracts entered into pursuant to the National Housing Act, the effective date of the decision will be the same as the date of the beginning of construction, or initial endorsement of the mortgage, whichever is earlier.

(2) Post Determination Actions. Project and general wage determinations may be modified from time to time to keep them current, correct erroneous wage determinations or for other purposes. (See 29 CFR 1.6).

(a) Modifications. These are issued to bring up to date some provisions of the original determination and are generally limited to one or a few particular crafts or job classifications. Modifications of wage determinations are effective if received by the contracting agency or published prior to contract award (or the start of construction if there is no contract award). In the case of contracts entered into pursuant to competitive bidding, however, if receipt or publication as appropriate occurs less than 10 days prior to bid opening, and the agency finds that there is not sufficient time still available before bid opening to notify bidders of the modification, it may be disregarded. In the case of projects assisted under the National Housing Act (or Section 8 of the U.S. Housing Act of 1937), modifications shall be effective if received or published, as appropriate, prior to beginning of construction or prior to the initial endorsement of the project (or the date of execution of the housing assistance payments contract), whichever comes first. If a contracting officer chooses to disregard a modification, a report of this action shall

be inserted in the contract file and made available to the Administrator upon request. Modifications have the same expiration dates as the original determination.

If a contract has not been awarded within 90 days after bid opening, or in case of projects under the National Housing Act or Section 8 of the U. S. Housing Act of 1937, construction has not begun 90 days after initial endorsement or the signing of the agreement to enter into a housing assistance payments contract, any modifications published to a general wage determination prior to award of the contract or beginning of construction, as appropriate, shall be effective with respect to that contract unless the agency requests and obtains an extension of the 90-day period from the Administrator. (See 29 CFR 1.6(3)(iv)).

(b) Supersedeas Wage Determinations. These are issued to bring up to date the provisions of original decisions and generally involve changes or corrections in a large number of crafts or job classifications as opposed to a "modification" which usually involves only limited change. Supersedeas decisions affecting both project and general determinations are effective under the same circumstances as "modifications". (See (2)(a) above). However, the difference between modification and a supersedeas is that the modification allows the old decision to remain active and changes only a few of the rates, whereas the latter supersedes the old decision and, therefore, the old decision cannot thereafter be used by the agency. A modification carries the old decision number and a supersedeas carries a new number. However, neither the modification nor the supersedeas extends the life of the original decision.

(c) Letters of Inadvertence. These letters are issued to correct inadvertent errors in the written text of a wage determination. The sole purpose is to correct wage schedules so that the wage determination will accurately and fully reflect the actual rates prevailing in the locality at the time the wage determination was issued. Letters of inadvertence, authorized by 29 CFR 1.6(d) of the Regulations, are used to correct errors due to transposition of rates and other clerical mistakes made in processing the schedule; they are not used to correct errors in judgment. The corrections are required to be included in the contract, retroactively to the start of construction.

(d) Incorrect Wage Determination: Before Contract Award. If written notification is received from the Department of Labor any time prior to contract award, or the start of construction where there is no contract award, that the bid documents contain the wrong wage schedule, or that a wage determination is withdrawn because of a decision by the Wage Appeals Board, such schedule or wage determination shall no longer be valid and may not be used -- without regard to whether bid opening (or initial endorsement or the signing of a housing assistance payments contract) has occurred.

(e) Lack of Valid Wage Determination: After Contract Award. If a contract is awarded without a wage determination or the wage determination on its face or the terms of the regulations is clearly inapplicable, or if an erroneous wage determination was issued because the contracting agency submitted an inaccurate description of the project or its location, the Administrator may issue a wage determination after contract award or the beginning of construction. Under these circumstances, the agency is required to terminate and resolicit the contract, or incorporate the valid wage determination retroactively to the beginning of construction, as appropriate under procurement law. The contractor is to be compensated for any resulting increase in wages.

(f) Additional Classifications - Conformances. Regulation 29 CFR 5.5(a)(1)(ii) specifies that the contracting officer is to require that any class of laborers or mechanics which is not listed in the applicable wage determination but which is to be employed under the contract is to be classified in "conformance" with the wage determination.

A specific conformance procedure has been provided through which the contracting agency may request that an additional classification be added to a given wage determination. Chapter VI(E) of this manual lists the criteria which must be met before a rate may be conformed.

CHAPTER IV. DETERMINING PREVAILING WAGES

Introduction. Section 1.3 of the regulations prescribes that the Wage and Hour Administrator ". . .conduct a continuing program for the obtaining and compiling of wage rate information" . . . and ". . . encourage the voluntary submission of wage data by contractors, contractors' associations, labor organizations, public officials and other interested parties, reflecting wage rates paid to laborers and mechanics on various types of construction in the area." Section 1.3(b) further indicates the types of information that may be considered in making wage rate determinations. These procedures have been carried out through the use of wage surveys and the provisions of collective bargaining agreements.

This section is devoted to examining W-H's processes for obtaining and compiling wage payment information for the purpose of issuing wage determinations. Particular emphasis is placed on the need for a systematic approach to the collection and compilation of data.

A. Scope of Task. Federally directed and assisted construction activity is not restricted to any geographic sector of the nation or to any particular type of construction. As a result, data collection methods employed by Wage-Hour for gathering prevailing wage information must be capable of determining, with accuracy, patterns of wage compensation, including fringes, for virtually all classifications of construction workers in at least the four major types of construction, within each of the more than 3,000 counties in the United States. And, since the objective is determining "prevailing" wages, to be most useful, specific collection actions must be completed within a relatively brief time frame.

B. The Data to be Collected. Operation of the Davis-Bacon program necessitates a continuing effort by W-H to obtain, compile and analyze wage rate information. This section explores the nature of the data and the means of collection.

(1) What Information. Wage rates are issued for each classification of laborer and mechanic that will likely be employed in Federally funded or assisted construction in a certain type of construction. Information on

wages being paid, therefore, must be collected and tabulated on the basis of distinct job classifications and construction categories.

The survey reporting form used by W-H to collect wage and fringe information for designated construction projects, "Contractor's Report of Construction Wage Rates" (Form WD-10), provides for reporting data on an individual job classification basis. Data requested includes the contractor's name and address, project description and location, value of project, starting and completion dates, the peak number of workers employed in each classification (i.e., carpenters, electricians, laborers, etc.) and the wage rate, including bona fide fringes, paid each worker. (See Appendix A, p. 104.)

Section 1.3 of the regulations provides that wages paid on projects subject to the Davis-Bacon Act are not to be considered in developing wage determinations for "building" and "residential" construction projects unless the Department finds that there are not sufficient data from privately financed projects of a character similar to determine prevailing wages. In determining whether there are sufficient data, consideration should be given to surveying surrounding counties or surveying projects completed within the past year. (See also Chapter V, Step 9 for a discussion of adequacy of data.)

(2) Geographic Scope. A prime objective of the Davis-Bacon program is to protect "local rates of pay" and 29 CFR 1.2(b) stipulates that the "area" for the determination of wage rates is to be the city, town, village, or other civil subdivision, i.e., county, of the State in which the work is to be performed. For its data collection program, W-H usually designates the county as the principal area of focus, although in many cases more than one county is included in a specific data gathering effort. (Indian reservations, as unique political jurisdictions which often encompass more than one county or State also have formed geographic units for predeterminations of wages.)

The area of consideration for a wage determination in certain instances may be extended beyond the boundaries of a particular county. Specifically, the county is to be used unless sufficient current wage data (data on wages paid on current projects, or, where necessary, projects under construction no more than one year prior to the beginning of the survey or the request for a

wage determination, as appropriate) is unavailable to make a wage determination.

In those instances, wages paid on similar construction in surrounding counties may be considered or if there has not been sufficient similar construction in surrounding counties or in the state in the past year, wages paid on projects completed more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate, may be considered. Regulations 29 CFR 1.7 prohibits the use of wage data from projects in metropolitan areas in making wage determinations for rural areas, and vice-versa. For purposes of Davis-Bacon, if a county is located in an area designated by the Office of Management and Budget as a Metropolitan Statistical Area, it is to be classified as a metropolitan area for survey purposes. If not included in such an area, it will be considered rural.

Data from metropolitan and rural counties are not to be commingled. Lists of Metropolitan Statistical Areas (MSAs, PMSAs, and NECMAs) are used to determine whether a county is metropolitan or rural. An area qualifies for recognition as MSA (e.g., Albany - Schenectady - Troy, N.Y.) in one of two ways: if there is a city of at least 50,000 population, or an urbanized area of at least 50,000 with a total metropolitan population of at least 100,000.

MSAs are usually defined in terms of counties, and in New England in terms of cities and towns. In addition to the county containing the main city, an MSA also includes additional counties having strong economic and social ties to the central county.

Primary Metropolitan Statistical Areas (PMSAs) (e.g., New York, N.Y.) are MSAs that are grouped together to form Consolidated Metropolitan Statistical Areas (CMSAs) (e.g., New York - Northern New Jersey - Long Island). New England County Metropolitan Statistical Areas (NECMAs) (e.g., Manchester-Nashua, New Hampshire) are used when data cannot be obtained below the county level.

Based mainly on data from the Decennial Census, MSA lists are issued approximately every 10 years by the Office of Management and Budget. The current lists took effect on June 30, 1983. Supplemental announcements of a few new MSAs may be issued at any time.

(3) How Collected. Wage determinations are based on actual wage and fringe benefit rates currently being paid to construction workers in the area to which these determinations will apply. The long-term policy of the agency has been to encourage the voluntary submission of wage rate data, including collective bargaining agreements, by industry organizations for use in the determination process. Presently, the majority of the wage decisions issued are based on surveys of contractors as to the wages being paid on projects in the designated area and type of construction. Surveys are conducted by staff of the Regional Offices, or, in some cases, by state agencies, universities or other organizations under contract to ESA/W-H.

C. Area Practice Considerations. Due in part to area practice considerations, the collection of wage rate information under the Davis-Bacon program is a complex process. Identifying craft content as well as other local practices and customs that may significantly affect the development and application of wage determinations is referred to as an area practice survey (APS). These "survey" efforts will vary extensively in scope and intensity of effort depending on the particular situation at hand. APS's are to be conducted as part of the prevailing wage survey (Chapter VI(7)) and, in some instances, after wage determinations have been issued. Results of each APS should be documented for guidance in subsequent prevailing wage survey actions in the area.

Area practices generally must be identified in two types of circumstances:

- Area practice must be determined when work traditionally performed by employees in one classification (occupation) is performed by workers in another class and at a different wage rate.
- Delineation of area practice is required when local contractors apply a unique schedule of wage rates to a sub-group of construction or when contractors apply wage rates designated to one type of construction to a segment of another type.

The following examples illustrate how area practice comes into play:

Case I. Classification/Before Contract Award

Carpenters are generally responsible for constructing, erecting, and installing structures and fixtures made of wood. In some cases, this work

also covers the application and installation of drywall or other wall board sheets to ceilings and interior walls. In other instances, Davis-Bacon wage survey data may indicate that a different classification -- drywall hanger -- is performing a significant portion of the drywall work. With the drywall hanger paid about $6.00 per hour and the carpenter paid close to $16.00 per hour, accurate determination of the prevailing wage for the drywall work requires that we first determine how many carpenters are being paid for drywall work. To determine this, an area practice study is conducted in conjunction with the wage survey. This may take the form of simply analyzing the list of subcontractors submitted along with the classification and wage data provided by each, or it may involve a telephone or mail survey to clarify the duties of each carpenter. Once this additional information is gathered, wage rates for all those doing drywall work, whether classified as carpenter or drywall hanger, may be used in the usual way to compute the prevailing rate. (See Chapter V (7)).

Case 2. Classification/After Contract Award

Assume that the union rate has been issued as the carpenter wage determination in a given county. At the same time, no rate was issued for drywall installer, because the governing collective bargaining agreement for carpenters includes drywall work. A contract is awarded using the appropriate wage determination, but a subcontractor requests that the drywall installer class be added. He informs the contracting agency that his employees have agreed to do drywall work at $6.00 per hour. The contracting officer passes the request along to the Branch of Construction Wage Determinations, including some corroborative payroll data. Based upon Wage Appeals Board Case No. 76-6, Decision and Order dated June 14, 1977, if it can be determined that carpenters subject to the governing collective bargaining agreement in the locality do drywall work, the request for a drywall installer wage determination will be denied. (The wage determination already contains a classification performing the work.) On the other hand, if it cannot be demonstrated that carpenters do drywall work, the additional classification must be approved. To make this determination, evidence of area practice will be obtained. (Note also that it is required that the wage rate of the newly added classification must bear a reasonable relationship to the other rates on the determination.) For detailed

description of the "conformance" procedure, see Chapter VI (E) of this manual.

Case 3. Type of Construction/Unique Schedule

A wage determination is issued for a water line. Water line projects are heavy construction. A contractor association protests the wage determination claiming that area practice in the locality is to pay a unique schedule of wage rates for water and sewer line construction. To settle this dispute, an area practice study/survey would be conducted.

Case 4. Type of Construction/Single Schedule

A wage determination is issued for construction of a wastewater treatment plant. Since construction of the plant involves some work which is generally classified as building construction and some which is usually classified as heavy construction, the wage determination issued contains both the local building and heavy schedule of wage rates. It is claimed that area practice dictates that a single schedule (either the established building or heavy rates) be substituted for multiple rates. Again, an area practice study would be conducted to clarify local custom but only with respect to the structures which are not clearly heavy or building construction. Due regard will be given to other considerations such as those listed in WAB Case No. 77-23. (See Chapter 3 (D).)

If at all possible, questions on area practice that arise prior to contract award are resolved through area practice studies conducted at the initiative of the survey office (Regional Office). This makes the area practice determination an integral part of the initial wage survey effort and completes the picture provided by survey data. On the other hand, when such a study is required after award of a contract, it usually follows a conformance request or complaint transmitted directly by an interested party to the Branch of Construction Wage Determinations. In these instances, as a matter of expediency, the area practice study is generally conducted by Branch staff in the National Office.

CHAPTER V. THE SURVEY

Introduction. The purpose of Davis-Bacon wage surveys is to collect information on wage and fringe benefit rates paid to mechanics and laborers working on construction projects of a similar character in a predetermined geographic area and calendar period. Since it would be rare to obtain "perfect information" (i.e., 100 percent of the active construction projects were identified and properly classified, all associated contractors were identified, a 100 percent response rate was obtained, there was no response error and there was no coding error), the overriding concern is that statistical bias not be introduced inadvertently into the survey. Each project and its contractors should have equal probabilities of being identified, responding and being included in the final data base from which the prevailing rates are derived.

Since obtaining perfect information would be prohibitively expensive, perhaps even impossible, an eleven-step survey procedure is outlined in this document which, if followed carefully and with sound judgment, can produce acceptable measures of prevailing wages (see Figure 5). Ideally, the survey results will be the product of the survey design and wage structure and independent of the analyst.

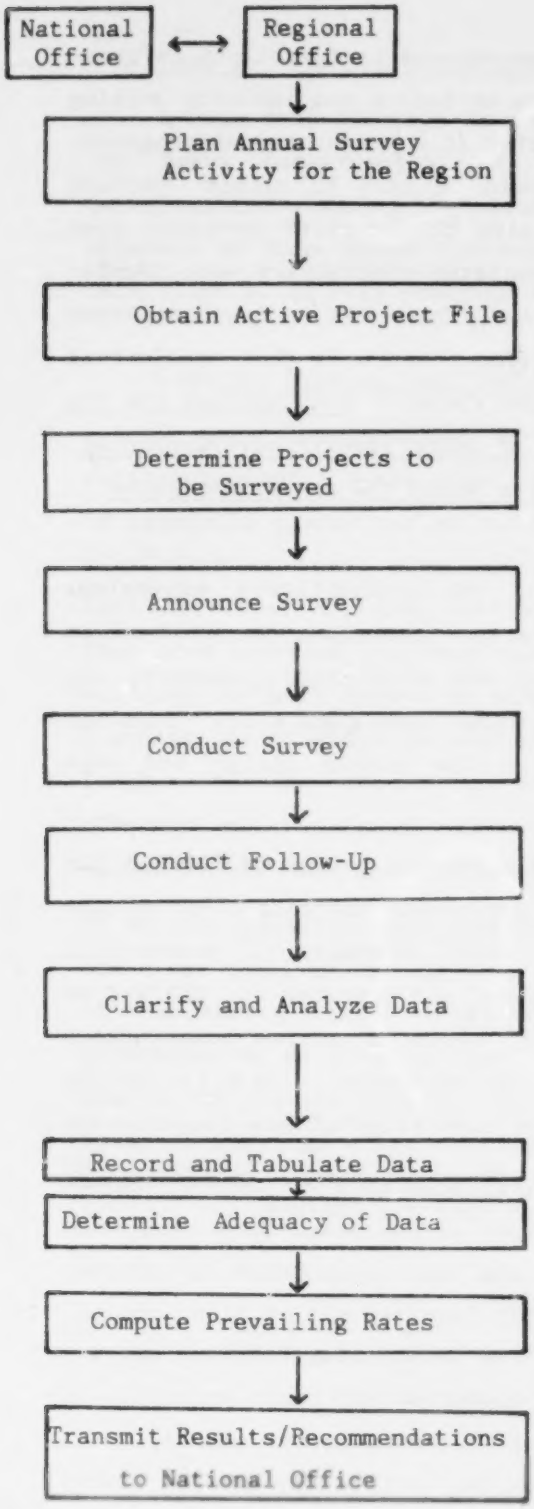
In order to facilitate implementation of the survey procedure ESA/W-H has contractual arrangements with Construction Resources Analysis (CRA) of the University of Tennessee and the F. W. Dodge Division of McGraw-Hill Information Systems Company. CRA has developed and operates for ESA/W-H an automated system which produces, on demand, lists of active construction projects by county and month for the entire United States. Input to the CRA model includes data from monthly F. W. Dodge tape files of new construction projects. In addition to providing data on construction projects, CRA conducts a number of Davis-Bacon surveys each year for ESA/W-H.

Step 1. Plan the Survey.

Development of long-range survey plans, such as determining how many surveys are to be conducted, where they are to be conducted and their priority, is discussed in Chapter VII. The Regional Survey Planning Report (RSPR), which shows construction active in the current year for each county and the status

Figure 5

The Survey Procedure



1. Plan the survey activity using the Regional Survey Planning Report (RSPR) and the Uniform Survey Planning Procedure.

2. Obtain the file of active projects by ordering the file for specified boundary frame (time period, type of construction, geographic area) from CRA and verify adequacy.

3. Determine the projects to be surveyed and request CRA to order project "slips" from Dodge.

4. Notify national and local interested parties of the survey, its boundary frame and cutoff date.

5. Contact general contractors to obtain lists of subcontractors. Mail WD-10 Forms to all contractors.

6. Perform uniform follow-up by sending follow-up cards and supplemental WD-10's to nonrespondents followed by telephone calls.

7. Call contractors to obtain missing/ambiguous data on returned WD-10's and resolve area practice issues. Close survey.

8. Tabulate in-scope wage and fringe benefit data.

9. Test to see if adequate data were obtained from the survey.

10. Calculate prevailing wage and fringe benefit rates in accordance with appropriate procedures.

11. Send results, recommendations, and compilation of survey data to National Office.

of prevailing rates for each county, is a key element to be used as a basis for planning future survey activity. Having determined the need for a survey of a given type of construction in an area, the Regional Wage Specialist should, in consultation with the National Office, designate the county(ies) and type of construction to be included in the survey and the reference period for the construction projects to be considered "active".

The reference period refers to the calendar time frame during which projects must be under construction (active) in order to be included in the survey. Although the actual number of active projects cannot be predetermined with complete accuracy, experience indicates that one can expect to find about 6 building projects and about 1 heavy project active during a single month per 10,000 population. (This will vary by region and month of year.)

Step 2. Obtain the File of Active Projects.

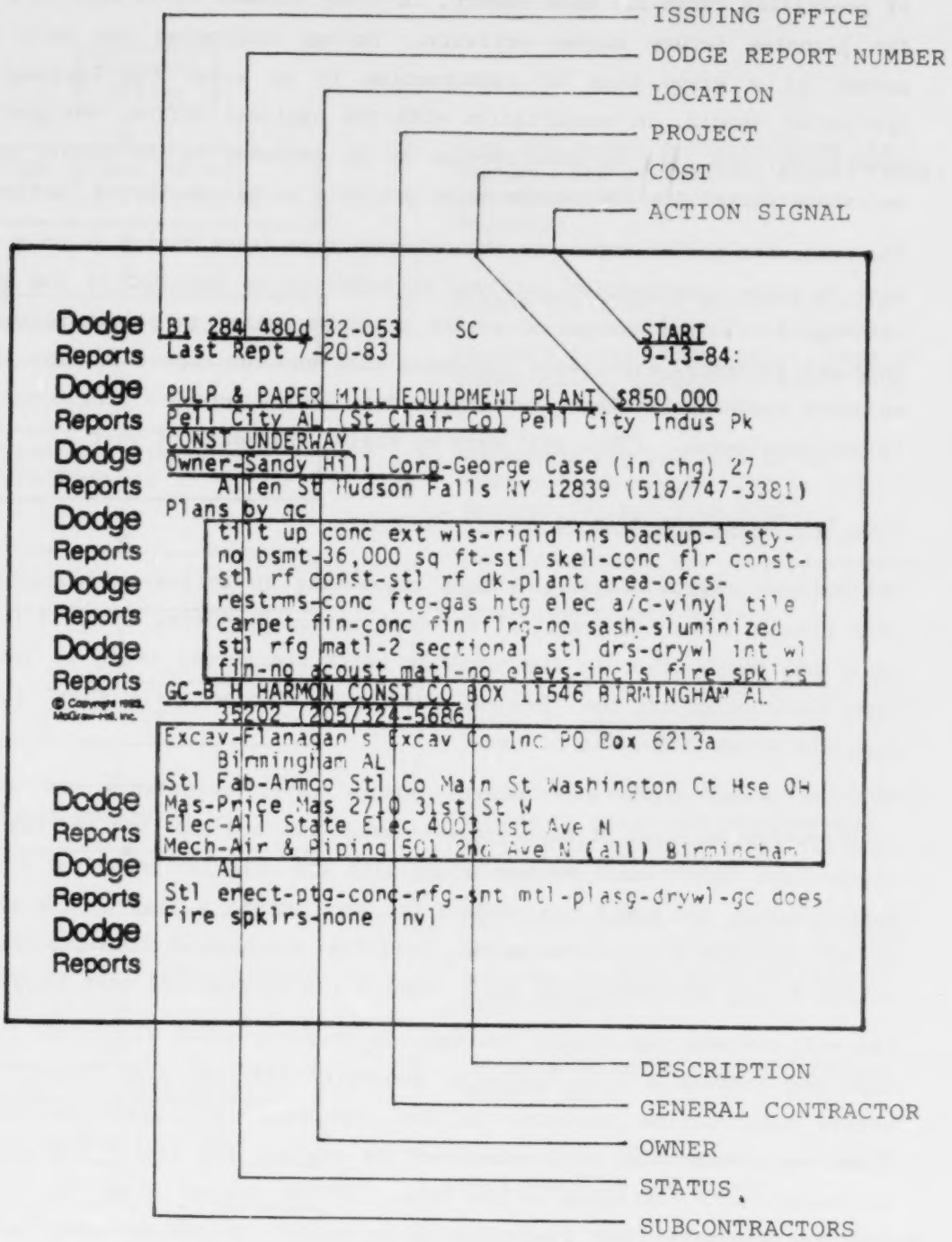
The analyst should complete a form requesting an active project file for each planned survey and mail it to Construction Resources Analysis (CRA) at least one month prior to the month in which the survey is to be initiated (See instruction on the "Request for Active Project File Form" shown in Appendix A, pp. 108-110.)

The CRA model reads each monthly Dodge tape, calculates the expected construction duration of each project based upon end-use type and value, and stores into memory each project along with its calendar period of duration. Upon command, the model can produce for each county a list of the projects by end-use type (e.g., residential, building, heavy, and highway) which were active during any month from the current month through the past 12 months.

CRA will process the request through its computer model within two to three days and produce a file (computer generated listing) that identifies all active construction projects for the type/geographic area/time reference frame requested. CRA will telephone the analyst and report the number of active projects contained in the file. If the analyst deems the number of projects adequate, the listing will be mailed to the analyst and Dodge Reports ("slips") will be ordered from F. W. Dodge (to be mailed directly to the analyst.) A sample slip is shown in Exhibit 1, p. 46. If necessary, CRA follows-up with Dodge to locate missing slips or expedite responses.

EXHIBIT 1

DODGE REPORTS


ISSUING OFFICE
DODGE REPORT NUMBER
LOCATION
PROJECT
COST
ACTION SIGNAL
Dodge Reports
BI 284 480d 32-053 SC START
Last Rept 7-20-83 9-13-84:
PULP & PAPER MILL EQUIPMENT PLANT $850,000
Pell City AL (St Clair Co) Pell City Indus Pk
CONST UNDERWAY
Owner-Sandy Hill Corp-George Case (in chg) 27
Allen St Hudson Falls NY 12839 (518/747-3381)
Plans by gc
tilt up conc ext wls-rigid ins backup-1 sty-
no bsmt-36,000 sq ft-stl skel-conc flr const-
stl rf const-stl rf dk-plant area-ofcs-
restrms-conc ftg-gas htg elec a/c-vinyl tile
carpet fin-conc fin flrg-no sash-sluminized
stl rfg matl-2 sectional stl drs-drywl int wl
fin-no acoust matl-no elevs-incls fire spklrs
GC-B H HARMON CONST CO BOX 11546 BIRMINGHAM AL
35202 (205/324-5686)
Excav-Flanagan's Excav Co Inc PO Box 6213a
Birmingham AL
Stl Fab-Armco Stl Co Main St Washington Ct Hse OH
Mas-Price Mas 2710 31st St W
Elec-All State Elec 4002 1st Ave N
Mech-Air & Piping 501 2nd Ave N (all) Birmingham
AL
Stl erect-ptg-conc-rfg-snt mtl-plasg-drywl-gc does
Fire spklrs-none invl
DESCRIPTION
GENERAL CONTRACTOR
OWNER
STATUS
SUBCONTRACTORS

If the analyst deems the file inadequate in number, a telephone request should be made to CRA to re-run the file based upon the analyst's respecification of the geographic/reference frame. This procedure can be repeated until an adequate survey base is found; the project file will then be processed (see preceding paragraph). (Adequate, in this instance, refers to a sufficient number of projects to provide a representative data base covering the crafts required to complete the given construction.)

As a general statement, consideration of project data is extended back in time (up to one year) and out geographically (to include other counties) to the extent necessary to produce a sound, objective basis for the issuance of a determination of prevailing rates in the particular locality (see Chapter IV B (2)). In rare cases, such as a dam, missile site or major bridge construction, consideration may have to be given to inclusion of projects at a considerable distance from the proposed site. However, a metropolitan county cannot be used as a source of data for a rural county (or vice versa) and state boundaries are not crossed; nor should counties with known distinctly different wage patterns be grouped together.

If the project file indicates that data from a one-month reference period (the most current month) will be adequate, the survey should be limited to such projects. If it is necessary to expand the number of projects, the reference period may be increased to include up to the 12 previous months. A project has been "completed" when it has been accepted by the sponsor as completed. Later warranty work on a completed project would not bring a project within the scope of a survey if it was completed prior to the survey period.

Step 3. Determine the Projects to be Surveyed.

The project file produced by CRA is the starting point for development of the survey data base. The file will identify projects valued at $2,000 or more of the type specified (building, heavy, highway and residential) in the geographic area specified, and estimated to be active during the time period requested.

Since the statistical model used to estimate the file of active projects makes implicit assumptions about project durations (based upon value, type and region) and relies solely upon F.W. Dodge data, which may not cover all

projects, the file will always contain some projects that are inactive and exclude some construction projects that are active. Missed F. W. Dodge projects are due primarily to variations in construction schedules due to start delays after announcement of contract award, litigation of disputes arising during the course of construction and other factors which cause specific construction schedules to depart from norms used in the CRA model. For example, the CRA model would estimate that a $5,000,000 office building in Iowa with a contract award in January, 1982 would be completed by June, 1983 and CRA would not have included it as an active project in August, 1983. However, if litigation among the general contractor and subcontractors or a labor dispute subsequently delayed completion to August, 1983, the active project would have been skipped.

In light of the limitations of the Dodge-based project data, the survey procedure contains additional steps to uncover construction within the scope of the boundary frame. For example, general contractors are asked to supply information on additional projects that meet the survey criteria. It should be noted that while F. W. Dodge data contain estimates of the number of single unit and two-to-four unit residential buildings, it contains no information on the owner or contractor. While the number of projects may be useful to the analyst in conducting residential surveys by revealing the level of activity in a county, building permit offices, planning agencies, local home-builder associations and building supply firms will still have to be contacted to identify the names of contractors associated with residential development.

Mixed projects, e.g., water treatment plants which are mainly "heavy" construction but often include a substantial amount of "building" construction, are generally ordered from F.W. Dodge by their dominant type. (Consideration must be given to "area practice".) Since it is necessary that mixed projects be treated as separate components, a procedure should be followed to identify the type of construction performed by the prime contractor and each subcontractor in order that the construction may be separated into appropriate categories.

The CRA file of "building" projects may include some "residential" projects (e.g., apartments with less than five stories) because of incomplete Dodge information. Since the Dodge slips often do not include information on

number of stories, apartments and condominiums with unknown stories are included in the CRA "building" files. The analyst should ascertain whether the projects are "building" or "residential" by calling the general contractor or owner.

Note that the survey reference period refers to the time when the projects were active. A project is considered active from the time onsite work begins (ground breaking) until it is released to and accepted by the owner. Peak employment for many contractors associated with active projects will often occur before the reference period and some will occur after the period. For example, if a reference period were defined as August, 1984, only projects under construction (active) during August would be eligible. However, some of the projects still active in August 1984 may have begun three or four years earlier and peak employment for most of the subcontractors on these projects would have occurred prior to August, 1984. However, their wage data would be included in the survey (in-scope). Also, since data collection on the projects active in August, 1984 would probably begin in September with a cut-off date for return of WD-10 Forms eight to ten weeks after the survey was begun, contractor peak employment on recently initiated projects active in August would likely occur after August, e.g., in September or October, 1984; their data would be included in the survey (in-scope). Contractor data on projects completed before August, 1984 or begun after that month would be out-of-scope and excluded.

Using the Request for Active Project File Form (see Appendix A, p. 108), the wage analyst requests from CRA a listing of active projects in the county(ies) to be surveyed. Prior to ordering the Dodge slips for projects on the list, CRA will notify the analyst of the number of projects in the listing (unless instructed otherwise), so that the project list can be expanded, if desired, by increasing the length of the survey time period.

Once the analyst has determined that the time frame is sufficiently broad to produce an adequate number of active projects for a survey and notified CRA to order the "slips" in the particular file from F.W. Dodge, approximately three weeks will be required to receive the order from Dodge. However, CRA will send to the initiating analyst a listing of the active projects at the same time the order is sent to Dodge. This listing will contain for each record (project) the Dodge identification number, a county and state code,

month and year of contract award, code for specific end-use type of construction, ownership and project value (See Exhibit 2, p. 51).

Step 4. Announce the Survey.

When the active project list is ordered from CRA, the survey analyst should notify by letter appropriate Congressional delegations and local and national parties who should be interested in the impending survey. All national organizations listed in Appendix E, pp. 165-167 are to be contacted when conducting the appropriate survey. The Regional Office will maintain a current file of names and addresses of interested regional, state and local parties. A complete record will be maintained of correspondence concerning wage surveys. Examples of "notification" letters are in Appendix A, pp. 97-98.

In addition to the written notifications, where appropriate a representative from the RO staff responsible for the survey should arrange to meet in the county(ies) to be surveyed with local representatives of the following organizations (the exact list may vary with the type of construction surveyed and the number of counties in the survey): Associated Builders and Contractors, Associated General Contractors, Building Trades Councils, city/county offices responsible for public construction (in the case of heavy and highway surveys) and speciality trade contractor associations. The purpose of the local meetings is to increase the survey response rate, reliability and representativeness. A thorough explanation of the survey procedure should be provided to all parties, including the following information:

- the survey boundary frame (emphasizing the reference period),
- the fact that wage/employment information will be solicited by WD-10 Forms from contractors-general, prime, sub (data will be accepted from labor unions and contractor associations and will be verified where appropriate);
- the period in which the survey will be conducted (including the response cutoff date) and,
- the active project file(the parties may be able to add in-scope projects to the file which were missed and delete out-of-scope projects which should not have been included in the file -- a complete record of any deletions/additions should be kept.)

EXHIBIT 2

CRA LISTING OF ACTIVE CONSTRUCTION PROJECTS

CONSTRUCTION RESOURCES ANALYSIS
ACTIVE PROJECT FILE AS OF 8408 (END>=8407)
SORTED BY START YEAR AND PID

17:14 THURSDAY, OCTOBER 18, 1984

CNT=49

(A) OBS	(B) PID	(C) VALUE	(D) STR	(E) OWN	(F) YR	(G) MON	(H) ST	(I) CNT	(J) COUNTY
1	680976	1083	74	3	83	11	28	49	HINDS
2	685589	3200	94	1	83	6	28	49	HINDS
3	692840	3000	1	1	83	8	28	49	HINDS
4	694624	2000	1	1	83	6	28	49	HINDS
5	698919	506	10	1	83	12	28	49	HINDS
6	699074	233	41	3	83	11	28	49	HINDS
7	699253	415	68	3	83	12	28	49	HINDS
8	701756	229	2	1	83	12	28	49	HINDS
9	659492	1527	142	3	84	6	28	49	HINDS
10	664397	1360	8	3	84	5	28	49	HINDS
11	670568	1246	105	3	84	8	28	49	HINDS
12	670682	1824	48	2	84	2	28	49	HINDS
13	675290	862	51	2	84	8	28	49	HINDS
14	681781	160	143	3	84	1	28	49	HINDS
15	686548	457	5	3	84	4	28	49	HINDS
16	686934	762	93	3	84	2	28	49	HINDS
17	687342	157	5	3	84	4	28	49	HINDS
18	687345	145	47	3	84	2	28	49	HINDS
19	687889	780	57	3	84	4	28	49	HINDS
20	688301	31	47	3	84	5	28	49	HINDS
21	688489	197	140	3	84	3	28	49	HINDS
22	688533	474	52	3	84	6	28	49	HINDS
23	688555	349	52	3	84	2	28	49	HINDS
24	689205	72	48	3	84	6	28	49	HINDS
25	689225	301	48	3	84	1	28	49	HINDS
26	689342	5500	71	1	84	6	28	49	HINDS

(see next page)

EXPLANATION OF TERMS USED IN EXHIBIT 2

(A) Record number (observations);

(B) project identification number which will correspond with PID on Dodge slip

(C) value in thousands of nominal dollars;

(D) structure code for end-use of project (see Dodge code);

(E) Ownership
(1 = private, 2 = city, 3 = county, 4 = state, 5 = federal);

(F) year of construction initiation;

(G) month of construction initiation;

(H) state location of project (see Dodge code);

(I) county location of project (see Dodge code);

(J) county location abbreviation.

Every Dodge "slip" has an ID number. When additional projects are added it is important to assure that they are provided with an ID number and entered into the system. New projects (not on CRA list) identified by interested parties or from other sources, should be assigned project identification numbers beginning at 000001 (outside the range of the Dodge ID system) and a record for each project should include a name or description of the project, including street address, end-use type, date project began, approximate value, and general contractor (including city, state and telephone number). The interested parties should be asked to encourage contractors associated with the active projects to respond to the survey when contacted.

Step 5. Conduct Survey

Since the Dodge Reports do not contain the identity of all subcontractors (SCs), it is necessary to contact the general contractor (GC) or low bidder in some cases for the projects to obtain the names and addresses of their SCs. The SCs generally employ the largest portion of on-site mechanics and laborers, so their identification is critical to the success of the survey.

Upon receipt of the project reports from Dodge, the slips should be sorted by GC or prime contractor so that each firm will be contacted only once, if possible, to provide information on all their active projects. The CRA project file can identify federally-owned projects, but federally assisted projects are not identified. (Column 8 on the WD-10 Form indicates a Davis-Bacon project.) Data on these projects may be excluded when sufficient data from building or residential non-assisted, private projects is available. (See WD-10, item no.8, Appendix A, p. 104.) Sufficiency is defined in Step 9, p. 61). On the other hand, heavy and highway surveys include Davis-Bacon as well as private projects.

The GCs may be contacted first by a letter requesting an SC list (with a WD-10 Form enclosed for their own employees) and contacted by telephone only as a follow-up for non-response or data clarification. Alternatively, each GC may be contacted by telephone and asked the questions contained in Exhibit 3, p. 54. In the event the GC is unknown (Dodge slips are sometimes incomplete and GCs may not be known on "000001 projects"), construction owners may be called and asked the questions contained in Exhibit 4, p. 55.

If a GC cannot be contacted after repeated telephone calls, a letter containing an explanation of the survey (including the boundary scope) and a

EXHIBIT 3

Initial Telephone Contact with GC

Q Hello. I am conducting a Davis-Bacon wage survey in your area for the U. S. Department of Labor. May I speak with a person who is knowledgeable about your company's construction projects? (Name)

(If this is the person, identify yourself and go to 2).

(If not available, make appointment or if available, go to 1).

1. Hello. My name is _____. I am conducting a Davis-Bacon wage survey for the U. S. Department of Labor.

2. I am calling from _____. We are conducting a Davis-Bacon wage survey for the Department of Labor. Any information you give us by telephone or by mail will be kept confidential.

Our records indicate your firm was the general contractor for the following project(s).

a. (read from Dodge slip)
b.
c.
d.
etc.

Q Is this information correct? (If no, do you know the name of the general contractor? Go to 3 if single project listed. If not continue question concerning second project, etc.)

Q Was this project under construction in _____? If not, date completed. (If not started yet, go to 3).

Q. Would you please give me the firm name and address, and if possible a name and telephone number for each subcontractor on this project?

Q Now, concerning your employees on this (these) project(s), in a few days you will be receiving a Department of Labor form(s) requesting information on their wage rates and fringe benefits. Is this your correct address (read from Dodge slip)? I hope you will complete the form(s) and return it (them) to us.

Incidentally, was your firm engaged in construction on any other project in _____ county during _____ of this year: (If yes, get name of project, address and information on sub-contractors. If no, go to 3).

3. Thank you very much for the information you have given me. Good bye.

EXHIBIT 4

Telephone Interview with Construction Owner

Q Hello. I am conducting a wage survey for the U.S. Department of Labor. May I speak with a person who is familiar with your (name and address of project on Dodge slip) construction project? _____
(Name of Person)

(If this is the person, identify yourself and go to 2).

(If not available, make appointment or if available go to 1).

1. Hello. My name is _____. I am conducting a Davis-Bacon wage survey for the U. S. Department of Labor.

2. I am calling from _____. We are conducting a survey for the Department of Labor. Could you give me the name and address of the general contractor for your construction (name and address on Dodge slip)?

Name and address _____

_____

_____

Thank you very much for the information you have given me. Good bye.

(Used only where general contractor's name was not available from F. W. Dodge.)

request for a list of the SCs and a WD-10 Form(s) should be sent to the general contractor.

The mailing of WD-10's to the GC should proceed immediately upon telephone contact, and the mailing of WD-10 to the subcontractors can proceed as soon as the SC lists are received from the generals. (See the suggested transmittal letter shown in Appendix A, p. 99). An accurate record of each telephone call (completed and not completed) and letter sent should be maintained by the survey analyst.

A cut-off date should be included in the letter requesting data to be used in the survey (Appendix A, p. 99) and stamped in color on the top of the WD-10 Form, e.g., RESPONSES MUST BE RECEIVED ON OR BEFORE _____. An eight week period (from receipt of slips to cut-off) will usually be adequate but a longer period may be required for larger surveys. Data are not to be included in the current survey if they have been submitted past the announced cut-off date. Instead, late data are to be identified as such and forwarded to the Branch of Construction Wage Determinations with the survey report.

Step 6. Conduct Follow-Up

If responses to mailed WD-10 Forms have not been received within two weeks, follow-up cards (Appendix A, p. 103) may be sent to non-respondents. At the same time, the clarification process may begin with contractors who submitted ambiguous or incomplete responses.

If after four weeks a response still has not been received, a telephone follow-up is to be made. (See Exhibit 5). Repeated attempts should be made to contact each non-responding contractor (unless the contractor has stated explicitly that he does not wish to participate in the survey). The telephone follow-ups will often reveal that the initial WD-10 Form has been lost, and duplicate forms will have to be sent to non-respondents.

If it is not practical to telephone each nonrespondent, a random telephone/mail combination may be used as a follow-up procedure by telephoning, for example, every third or fourth nonrespondent while sending the others a second letter (original transmittal letter shown in Appendix A, p. 99), WD-10 Form and envelope stamped, "SECOND REQUEST".

EXHIBIT 5

TELEPHONE FOLLOW-UP

Hello. I am calling concerning a Davis-Bacon wage survey we are conducting for the U.S. Department of Labor. A few weeks ago we mailed a request for wage information to your firm but have not yet received a reply.

Q. Can you tell me who in your firm would have received this request? (Name)

(If this is the person, identify yourself and go to 2);
(If not available, make appointment or if available, go to 1).

1. My name is _____. I am calling concerning a Davis-Bacon wage survey we are conducting for the U. S. Department of Labor. A few weeks ago we mailed a request for wage information to your firm but have not yet received a reply.

Q. 2. Can you tell me if your firm plans to respond? (If no, go to 5; if yes, go to 3).

Q. 3. Please mail the information to us as soon as possible. If you prefer, I would be happy to take the information now by telephone if that would be helpful. Any information you give us by telephone or by mail will be kept confidential. (If no, go to 5; if yes, go to 4).

4. Read each question in WD10 boxes and complete form. (For box 9 , use list of occupations shown on back of transmittal letter.) Thank you very much for providing me with this information.

5. Thanks for taking the time to talk with me. Good bye.

The viability of the survey process requires that all follow-up activity be applied equally to the entire group of non-respondents to avoid introducing statistical bias.

All parties furnishing wage payment data in response to the survey are to be sent a copy of the form letter acknowledging receipt of the information (Appendix A, p. 101). The use of this letter is intended to reduce the number of complaints that data furnished were not considered in the survey.

Step 7. Clarify and Analyze Data

The data clarification process is to begin during the previous step, but a week or two of intensive effort will usually be required to reconcile ambiguities and incompleteness in the data and to investigate thoroughly unique "area practice" issues, if any, that are indicated by the survey responses or other sources. See Chapter IV (C) for description of APs and p. 40 of this Chapter for recommended methodology for conducting "area practice surveys".

Determining the nature of work performed by various occupational classifications reported is an area that often needs clarification (particularly among laborers and equipment operators) and quantification of fringe benefits (particularly by open shop contractors) also generally requires some call-backs. Also, analysts often will need to telephone the general contractors of construction projects whose projects have a high likelihood of mixed construction, i.e., water treatment plants, sewer plants, powerplants, airports, buildings with large parking areas or extensive landscaping, etc. (see Chapter III D (1)(e)). The GC should be asked to assign the subcontractors (who responded) to the major construction types, i.e., building, heavy, highway, or residential where the criterion of "significance" is met, and should be asked to identify its own workers by construction type.

The wage survey also may produce data for a number of CBA rates for a single craft. Each rate was the current negotiated rate at the time it was paid. Data from different points in time may have produced the appearance of a variation in rates that does not actually exist. The apparent variation in rates is caused by the time covered by the survey. Follow-up procedures should remove such questions concerning variations. If the analyst determines that the various rates were in fact then current CBA rates, the data

on number of workers should be combined at the current CBA rates. If the wage analyst cannot confirm that the contractor reported a CBA rate, the data should be used as reported. The basis for any updating of wage payment data should be noted on the survey instrument.

In some cases, CBAs designate dual rates for particular classes of workers: for example, one rate for work on projects under $50,000 and a higher rate for employment on projects $50,000 and over. The survey should discover and report such situations. If the survey does not show that the higher rate is prevailing, that rate will not be listed in any subsequent wage determination. If the higher of CBA dual rates is determined as "prevailing", then the lower and the higher rate will be included in a wage decision.

Also in this step an effort should be made to clarify area practice issues. Questions as to the proper classification for the work performed by a laborer or mechanic, or the proper type of construction (i.e., building, heavy, highway or residential) for work performed on a project with multiple wage schedules, are resolved by making an area practice determination. Such "surveys", when necessary, are conducted under the guidance of the RO Wage Specialist.

The Wage Appeals Board ruled in Fry Brothers Corp. (WAB Case No. 76-6, 6/14/77) that the proper classification of work performed by laborers and mechanics is that classification used by firms whose wage rates were found to be prevailing in the area and incorporated in the applicable wage determination.

Therefore, if the applicable wage determination reflected union negotiated rates for the particular classifications in question, it is necessary to determine how the work is classified by those firms who are signatory to the applicable collective bargaining agreements. This is accomplished by contacting the respective unions and asking if they perform the work in question and confirming the information provided by the unions with management's collective bargaining representative (e.g., contractor associations such as local chapters of The Associated General Contractors of America, National Electrical Contractors Association, etc.). If all parties agree, the practice is established. If, however, all parties do not agree as to the proper classification of the work in question (i.e.,

jurisdictional dispute between the unions, or management does not agree with union), it is then necessary to determine by survey which classification actually performed the work in question on similar projects (e.g., if the WD in question is a building wage schedule, then survey building projects) in the time period prior to the current project.

On the other hand, if the applicable wage determination reflects open shop (nonunion) rates for the classification in question, it is necessary to conduct a survey on similar projects built by open shop contractors. If the applicable wage determination is a mixed schedule (e.g., union electricians and open shop laborers), or it is based on average rates of both union and non-union workers, it is necessary to contact both union and open shop contractors who do the work in question and/or their associates.

In conducting a survey to determine the classification of work, the RO Wage Specialist should identify similar projects in the geographical area (usually the county) which were in progress during the period one year prior to the award of the contract or start of construction where there is no contract award of the project under investigation. If no similar projects were built in the area during that time frame, contact the NO for advice in expanding the survey in time and/or to contiguous counties. Determine what firms performed the work in question on these projects and contact those which are either open shop or union depending on the basis for the wage rates issued in the applicable wage determination. However, in the case of either building or residential construction wage schedules, whether DBRA projects may be included in the area practice survey must first be determined. This will depend upon whether such DBRA projects were included in the wage survey which served as the basis for issuing the wage rates in the applicable WD.

From each firm contacted, determine the week in which the greatest number of employees performed the work in question on these projects (i.e., "peak week") and determine how such employees were classified.

Compile all information received and total the number of employees in each classification which performed the work in question. The classification which has the clear majority of employees performing the work in question is the proper classification. However, if it is found that only 51% to 60% of

the employees in a classification performed the work in question, contact the NO for further guidance.

All Agency Memorandum Nos. 130 and 131 give general broad outlines of the proper categories of the various types of construction (building, heavy, highway and residential) subject to "local or area practice." For example, where a contract for a project (such as sewage treatment plant) contains multiple wage schedules (e.g., building and heavy), it may be necessary to resort to area practice as one factor in determining which schedule of rate applies to the various parts of a project.

The survey is conducted in essentially the same manner as described above, except that the task is to determine which rates were paid on similar projects for the type of work in dispute rather than which particular classification of laborer or mechanic performed a specific task. In conducting such a survey, we generally consider all projects of a character similar.

Step 8. Code and Record Data

Data from the valid WD-10 Forms are to be recorded on the WD-22a Form preparatory to analyzing the data (Appendix A, p. 107). Alternatively, the data may be entered directly into a computer. (CRA has developed computer programs to control the flow of the survey results and calculate the prevailing rates. Descriptions of the programs are available upon request from the National Office.) In either case, the survey data needs to be assembled for the review and judgment of the Branch of Construction Wage Determinations, keeping in mind that all original records are to be preserved intact.

Step 9. Determine Adequacy of Data

In general, a survey is considered acceptable when all ten of the survey criteria listed in Chapter VI(A)(2) have been met. These criteria are utilized to ensure that surveys properly observe established timeframes, construction types, geographic areas, classifications, area practices, and accepted procedures for data computation and survey notification. In addition, the criteria cover adequacy of the survey data. Survey data adequacy is examined through use of the overall usable response rate and employment criteria for individual classes.

In most instances, the overall usable response rate for the survey must meet or exceed 25 percent. The usable response rate is computed by dividing the number of responses received that provide usable survey data by the total number of contacts made with GCs and SCs. (Total contacts equal the number of WD-10's sent to all identified contractors, excluding follow-ups, and are determined by the relevant F.W. Dodge data base and the process described in Steps 1-3, above.)

$$\text{Usable Response Rate} = \frac{\text{Usable Responses}}{\text{Total Contractor Contacts (Excluding suppliers and other inappropriate respondents.)}} \times 100$$

If the survey response rate proves inadequate, this fact should be brought to the attention of BCWD and, in consultation with the Branch, consideration should be given to further follow-up efforts and/or expanding the scope of the survey in accordance with procedures described in Chapter IV (B).

In most instances, when the survey response rate equals at least 25 percent, data for a substantial number of workers in each of the major classes will be received. However, for surveys conducted in rural counties where construction activity is sparse, or for highly specialized classes, the number of employees for whom data are provided may be limited. In such cases, a wage rate for an individual class is to be recommended only when information on at least six workers is received from three or more contractors, none of which accounts for 60 percent or more of total reported employment.* However, if the overall survey usable response rate is 50

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*This is the Bureau of Labor Statistics (BLS) publication standard for occupational classifications included in its Area Wage Surveys conducted for the Employment Standards Administration. Data from such BLS surveys has formed the basis for wage determinations issued under the Service Contract Act since 1966.

percent or more, data on only three workers, from two contractors may be utilized. Exceptions to these standards may be allowed, but must be justified in writing.

Data adequacy requires that the minimum employment criteria are met for half or more of the key classes expected to be required for the construction covered. Classes not meeting the above criteria in an otherwise acceptable survey are not to be recommended for inclusion in a wage determination. However, it is possible that such classes may be subsequently added to wage determinations for particular contracts through conformance actions initiated by the contracting agency (see Chapter VI(E)).

Step 10. Compute Prevailing Wage Rates

Examples of calculations, performed manually or by computer, of basic and fringe benefit rates are presented in this section. The rules that apply are as follows:

1. Basic Rate. If more than 50 percent of the employees in a single trade are paid at one rate, that rate prevails. Otherwise the average mean rate prevails.

2. Fringe Rate. If it is found that a majority of the employees in any one craft are receiving the same basic hourly rate and the same amount of fringe benefits, that rate and fringe package will be determined as prevailing. If more than 50 percent of the employees in a single classification are paid any fringe benefits then fringe benefits prevail. If fringe benefits prevail in a classification and more than 50 percent of the employees receiving fringe benefits are paid the same total fringe benefit rate then that total rate prevails. If fringe benefits prevail, but 50 percent or less of the employees receiving benefits are paid at the same total rate, then the average of fringe benefits weighted by the number of workers who received fringe benefits prevails.

Fringe benefits are to be calculated collectively. Payments to be included in the calculations may be for any bona fide fringe benefits of the types specifically mentioned in the Davis-Bacon Act or are designated as cash

payment made in lieu of fringes. Any question of whether a fringe benefit is bona fide should be referred to the BCWD for determination.

Examples:

Basic Rate

In determining the prevailing rate, consideration is first given to whether a majority (more than 50% of the workers) rate prevails:

Number of Carpenters	(percent)	Rate of Pay
15	(16.7)	$7.10
8	(8.9)	7.75
51	(56.7)	8.25
13	(14.4)	8.50
3	(3.3)	9.00
90	(100.0)	

The prevailing rate in this case would be $8.25 since 51 out of 90 carpenters (56.7%) received $8.25 per hour.

Where a majority rate does not prevail, the prevailing rate is determined by the weighted average rate:

Number of Carpenters	(percent)	Rate of Pay 4
12	(23.1)	X 7.75 = 93.00
8	(15.4)	X 8.30 = 66.40
10	(19.2)	X 8.86 = 88.60
13	(25.0)	X 9.20 = 119.60
9	(17.3)	X 10.00 = 90.00
52	(100.0)	$457.60

In this case, the average rate would be $8.80 per hour as a result of dividing the total amounts paid to all 52 carpenters ($457.60) by 52.

Fringe Benefits

The prevailing fringe benefits are determined separately on the basis of total fringe benefits paid to or on behalf of each worker in an individual trade.

First, the majority rule (50% of the workers) applies to determine whether fringe benefits prevail for the classification.

Number of Carpenters	(percent)	Total Fringe Benefits
52	(55.9)	$0.00
10	(10.7)	0.28
14	(15.1)	0.44
8	(8.6)	0.80
9	(9.7)	1.10
93	(100.0)	

In this case, fringe benefits would not prevail because the majority of the carpenters (52 out of 93 carpenters; 55.9%) received zero fringe benefits.

Second, in the case where a majority of the workers receive fringe benefits, the majority rule applies to the workers receiving fringe benefits.

Number of Carpenters	(percent)	Total Fringe Benefits
3	(11.1)	$0.36
6	(22.2)	0.80
14	(51.9)	1.10
4	(14.8)	1.90
27	(100.0)	

The prevailing fringe benefits would be $1.10 because 14 out of 27 carpenters (51.9%) received $1.10 fringe benefits.

Third, in the case where a majority of the workers receive fringe benefits but a majority rate does not prevail among such workers on either the data including zero fringe benefits or the data excluding zero fringe benefits the prevailing fringe benefits are determined by the average rate computed from the data for the workers receiving fringe benefits excluding zero fringe benefits weighted by the number of such workers.

Number of Carpenters	(percent)	Total Fringe Benefits
10	(25.6)	X 0.60 = $ 6.00
9	(23.1)	X 0.85 = 7.65
12	(30.8)	X 1.20 = 14.40
8	(20.5)	X 2.10 = 16.80
39	(100.0)	$44.85

In the above case, majority fringe benefits do not prevail. Thus, the average fringe benefit of $1.15 would be the prevailing rate because $1.15 was the result of dividing the total paid to each carpenter ($44.85) by 39.

Step 11. Transmit Survey Results and Recommendations to National Office

Prevailing wage rate survey results are to be submitted by the survey office to the Branch of Construction Wage Determinations. Under no circumstances should survey results be disclosed to survey participants or to other interested parties.

The report should include the following documents:

- Forms WD-22 and WD-22a (computerized project report, approved by BCWD, may be substituted for 22a)
- A Survey Management Information Worksheet.
- All WD-10 forms (and other relevant documents and correspondence) that were produced by the survey.
- A transmittal memorandum noting any special situations involved in the survey or problems encountered and an explanation for any data collected and not included in the WD-22.
- Form WD-24 Construction Wage Survey Diary Sheet

(1). Reporting Forms.

For reporting prevailing wages, the "Wage Compilation" (WD-22) form is to be used (Appendix A, p. 106). The first column in this form "Union-Management Negotiated Rates" is for reporting current CBA rates and needs to be completed only for those surveys in which a significant union presence is found. The third column, "Recommended Rates", is for those wage rates which the survey office has found to be "prevailing" after following prescribed survey procedures, reviewing all factual data gathered, and computing rates by the procedure described in the previous section of the Manual; other columns of the form are self-explanatory.

Form 22a is for reporting survey information on a project-by-project basis. In completing the schedule, the name of the contractor should not be included in the "name and description" of the project. However, the survey office is to retain records on all parties from whom data was received.

The survey forms (WD-10s) are to be sorted by project. All information on the forms is to remain exactly as submitted. Any notations or other input to a WD-10 by the survey office should be made in red ink and initialed by the responsible analyst.

(2). Management Information Worksheet

The survey office is to complete a Management Information Worksheet (MIW) for each completed survey (Appendix A, p. 112). This form must accompany each survey submitted to the National Office's BCWD for approval. The objective of the form is to assist National and Regional Office staff in

improving their capability to plan and evaluate Davis-Bacon wage surveys. Information reported on the schedule will be entered into a computer by BCWD and provided as input to the survey planning and tracking systems described in Chapter VII. Instructions on how to complete the MIW are included in Appendix A.

(3). Construction Wage Survey Diary Sheet

The survey office is to complete a Construction Wage Survey Diary Sheet for each survey. When the survey is started, the top portion of the form is completed and sent to the NO to advise of the start of each survey. Thereafter each person working on the survey should indicate the date they worked on the survey, whether they are in the RO or NO, their name and position, the type of work on the survey they were performing , and the hours worked at that particular time and activity. When the survey is completed, the completed form should be submitted to the NO with the survey. A copy of this form is in Appendix A, p. 115.

CHAPTER VI. ISSUING WAGE DETERMINATIONS

Introduction. The authority to issue wage rate determinations rests with the Administrator of the Wage and Hour Division. Along with the authority goes the responsibility for assuring contracting agencies and the public, in general, that the rates stipulated prevail for corresponding classes of workers on similar construction projects in the locality.

The wage determination function actually encompasses four broad activity areas:
(1) review and analysis of surveys submitted by Regional Offices or other organizations; (2) processing of requests and the issuance of wage determinations, including updates, modifications and conformances, (3) updating of wage and fringe benefit schedules for classes covered by CBAs, and; (4) the processing of appeals of wage determinations.

The sections that follow discuss each of these major operations in sequence. As with the preceding chapter on survey procedures, the objective is to present information and guidance on the steps to be taken and the standards to be met. Again, the emphasis is placed on the need to apply predetermined standards in a systematic and consistent fashion.

A. Evaluating the Survey Data

Before survey data may be used as the basis of a wage determination a thorough evaluation of the survey material is to be conducted by the Branch of Construction Wage Determinations. To meet approval, the review process must affirm that the survey was conducted in accordance with standards and procedures authorized by W-H and that the survey results fully support the recommendations of the survey office.

W-H policy is for reviews to be completed within 45 calendar days after receipt in the National Office, and if the survey is approved, a notice to that effect is to be sent to the appropriate Regional Office. Likewise, a memorandum stating the reason(s) for disapproval of the survey is to be sent to the responsible Regional Office within the prescribed timeframe.

1. Review Process. Upon receipt of a completed survey at the Division of Wage Determination's Central Processing Unit, the material is timestamped and information from the MIW is entered into the automated tracking system.

(See Chapter VII (C).) Next, the survey is delivered to the BCWD where it is routed to the Section Chief responsible for the geographic area covered by the survey. The Branch is divided on an operational basis into three sections: east, west and south-central (Chapter II (B)).

The Section Chief will conduct an initial inspection of the survey report to determine if all required documents have been provided in acceptable form and if any special processing or review procedure is required. The survey then will be assigned to the section's Wage and Salary Specialist who conducts the evaluation or, in the case of more routine surveys, assigns the task to the appropriate staff analyst (each analyst specializes in certain states).

2. Survey Criteria. The survey reviewer is required to examine each report with regard to the following criteria:

- Are all data included for construction projects within boundary time frame? If not, such data are excluded.
- Are all projects in the given construction type? If not, such data are excluded.
- Are all data from construction projects in the prescribed geographic area? If not, such data are excluded.
- Are classifications assigned correctly in terms of the type of work being performed and have area practice issues been identified and resolved? If not, data are excluded, reassigned, or developed to resolve the problem.
- For building and residential construction, are non-federal data on each class "sufficient", in terms of the appropriate Wage-Hour guidelines. Classes for which there are inadequate data are excluded.
- Have proper procedures been followed in supplementing non-federal data for specific classes? (See Chapter IV (B).) Improper data are excluded.
- Have data from metropolitan and rural counties been commingled? If so, such data must be separated.
- Did the overall survey useable response rate meet the minimum standard and are data adequate for half or more, of the key classes expected to be required for the construction covered? If not, additional data must be developed. (Follow-up action includes contacting all major interested parties and possible extension of survey cutoff date.)
- Are the computations of prevailing rates correct in terms of rule application and execution? (Chapter V (10).)

- Is there confirmation that all major interested parties were notified that the survey was being conducted? (See Chapter V, Step 4 for description of proper procedures for informing interested parties.)

If a systematic review by the BCWD staff determines that the completed survey meets the criteria, then the recommended schedule of prevailing wage rates will be accepted for use as the basis for issuing future wage determinations for similar projects in the area or areas of application. The survey may be returned to the originating office where major deficiencies are found. In all cases, the RO will be informed in writing of how well each survey it conducted conformed to the above criteria.

If a survey is approved and thereafter new data are provided, such information is to be considered not as additional survey data (the survey has been completed) but as an indication that a new survey may be required in the future.

B. Issuing Project Wage Decisions

Project wage determinations are issued by BCWD at the specific request of a contracting agency submitting a "Request for Determination and Response to Request" (SF-308). Such wage determinations are applicable to the named project only and expire 180 days from date of issuance unless an extension is approved by the Wage and Hour Division. SF-308's are to be processed by W-H within 30 days of receipt.

Requests for project wage decisions are to be honored if submitted by the contracting officer for the Federal agency administering the contract. The exceptions allowed are: (a) highway contracts administered by the state highway departments in which case a Request could be accepted from the state; (b) projects constructed using revenue sharing funds, in which case a Request would be acceptable from the local government agency administering the contract or their representative; (c) Environmental Protection Agency projects for which a grant was given to the state and the state is authorized by EPA to administer the contract, in which case a Request would be acceptable from the state; (d) on projects constructed under a grant from the Department of Housing and Urban Development under the Community Block Grants Program, a Request may be accepted from the state coordinator for

that program and; (e) on subway system projects a Request may be accepted from the local transit authority. Generally, if a Request is received from anyone other than the contracting officer, it should be returned with instructions that it be sent through proper channels.

(1) Processing Project Determinations. BCWD will follow the procedures outlined below when it receives a request (SF-308) for a project decision:

- o The form is to be logged-in and assigned a decision number.
- o The request will be screened to determine whether the Davis-Bacon and Related Acts apply. This may involve contacting the federal agency requesting the determination for additional information.
- o If the DBRA apply, the BCWD Wage Specialist will determine whether the project is building, heavy, highway, residential, or some combination of the basic types. Consideration of "area practice" (see Chapter IV (C)) is to be given in determining the type of construction/wage schedule to issue.
- o Published general wage determinations will be checked to see if any apply. If they do, the request is returned, advising the agency to use the appropriate general wage determination.
- o If no general determination applies, available survey and CBA data are to be reviewed for possible use. If their use is inappropriate, the Specialist performs the functions required to produce the schedule through CBA update or by planning a new survey.
- o If a satisfactory wage schedule is available a determination signed by the BCWD Branch Chief will be issued to the requesting agency. A copy will be sent to the Regional Office along with an explanation of the basis for the determination.
- o The WD-ATS and RSPR computer files will be updated. (See Chapter VII).

(2) Extension of Expiration Date of a Project Wage Determination. Under certain conditions set out in 29 CFR 1.6(a)(1), a project wage determination may be extended beyond the expiration date. A request for an extension should be addressed to the Wage and Hour Administrator and be supported by a written explanation as to the necessity of the extension. If the request for extension is denied, BCWD will proceed to issue a new wage determination for the project.

C. Issuing General Wage Determinations. From 1971 through 1985 general or "area" wage determinations were published in the Friday issue of the Federal

Register. As of the 1st quarter of 1985, more than 500 general wage determinations were in effect. Hundreds of modifications and supersedeas determinations (see Chapter III (F)) are published each year.

Beginning January 3, 1986 all general wage determinations are published in the publication entitled General Wage Determinations Issued Under the Davis-Bacon and Related Acts. In addition, notices of supersedeas and general wage determinations and notices of modifications to existing wage determinations are published in the Federal Register. Notices and published wage determinations are updated on a weekly basis.

General Wage Determinations Issued Under the Davis-Bacon and Related Acts is offered on an annual subscription basis ($277 per volume including weekly updates) through GPO. Annual editions of the new publication contain all Davis-Bacon general wage determinations currently in effect. Thereafter, weekly updates are issued to subscribers via first class mail.

The new publication is divided geographically into three volumes: East, Central, and West. Subscriptions may be ordered from the GPO Superintendent of Documents. Inquiries regarding its availability may be directed to the Superintendent of Documents Order Desk at (202) 783-3238. New subscribers will receive the current year's annual edition and all weekly updates for that calendar year regardless of when the order is placed.

For those not wishing to subscribe, the publication is available at all 50 Regional Government Depository Libraries and many of the other 1,400 Government Depository Libraries across the nation.

The State composition of volumes of General Wage Determinations Issued Under the Davis-Bacon and Related Acts is as follows:

Volume I East		Volume II Central	Volume III West
Alabama	New York	Arkansas	Alaska
Connecticut	North Carolina	Illinois	Arizona
Delaware	Pennsylvania	Indiana	California
Florida	Rhode Island	Iowa	Colorado
Georgia	South Carolina	Kansas	Guam
Kentucky	Tennessee	Louisiana	Hawaii
Maine	Vermont	Michigan	Idaho
Maryland	Virginia	Minnesota	Montana
Massachusetts	West Virginia	Missouri	Nevada

(continued)

Mississippi	Dist. of Columbia	Nebraska	North Dakota
New Hampshire	Puerto Rico	New Mexico	Oregon
New Jersey	Virgin Islands	Ohio	South Dakota
		Oklahoma	Utah
		Texas	Washington
		Wisconsin	Wyoming

29 CFR 1.5(b) authorizes the issuance of a general wage determination upon the request of a Federal agency or at W-H discretion ". . whenever the wage patterns in a particular area for a particular type of construction are well settled and whenever it may be reasonably anticipated that there will be a large volume of procurement in that area for such a type of construction. . ."

A key issue for W-H to decide in each case is the geographic area to be covered by the determination. This area may coincide directly with the survey area or it may vary. For example, a wage survey may be conducted in a metropolitan area consisting of five counties. A general determination could be issued covering all of the counties or, two or more separate general determinations could be issued. The underlying objective of W-H is to reflect the "local" wages and not to establish new wage patterns.

If there is a general wage determination applicable to a project, the contracting agency may use it without notifying W-H. However, if there are any questions regarding the application of wage rate schedules, they should be referred to W-H (BCWD).

The issuance of modifications which change parts of existing determinations is governed by the same standards and criteria for data reliability, timeliness, and objectivity that apply to the issuance of new general and project determinations. Wage determinations are developed by BCWD and are subject to review and approval by the Assistant Administrator of the Office of Program Operations, Wage and Hour Division. An inventory of general determinations is contained in the Regional Survey Planning Report (Chapter VII (A)).

D. Updating Determinations Based on CBAs. In order to update wage determinations that are based upon collective bargaining agreements, the Branch of Construction Wage Determinations continually receives CBAs of the various construction trade unions throughout the United States. At any one time, the

Branch is likely to have 20,000 current agreements on file. CBA rates generally are found to prevail through the use of wage survey and/or a review of local market conditions.

Once a collective bargaining agreement rate has been determined to be prevailing, all general determinations and outstanding project determinations are to be maintained on a current basis by BCWD until such time as it is determined that the CBA rate no longer prevails for the class.

Determinations of prevalence and discussions on whether to maintain the current CBA rate are made on a craft-by-craft basis. When a CBA is received, the Wage Specialist extracts the wage and fringe benefit information for use in wage determinations, as appropriate.

If the particular CBA received is used as the basis for a current wage determination, a modification is prepared for each project and/or general wage determination affected. Since many of these agreements span more than one year, and contain various escalation clauses, Specialists also are required to review CBA files on a regular basis and to make appropriate modifications. Modifications also might be required by negotiated changes to existing agreements. If review indicates that the current CBA rate for a classification no longer prevails, steps should be taken to undertake a wage survey of the area.

E. Conformance Procedures. 29 CFR 5.5 (a)(1)(ii) provides that after contract award the contracting officer is responsible for the addition, conformable to the wage determination, of any needed classification of laborers or mechanics not listed in the wage determination. Such an action requires the concurrence of all interested parties and the Department of Labor (BCWD) must approve of the action. An additional classification action is not valid unless the Department has approved it; if a dispute exists, the matter is to be referred to the Department for resolution.

The above referenced section of the regulations specify that "the contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination..." when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

If there is agreement of all interested parties (the contractor, the employees to be used in the new classification(s), if known, or their representative, and the contracting officer) as to the conformed classifications and wage rates, a report of the action taken is sent to the W-H Administrator. If a dispute exists, the matter must be referred to the Administrator along with the views of all interested parties and the recommendation of the contracting officer.

All conformance notices are to be responded to in writing within 30 days of receipt. These responses either approve or deny the request or inform the submitting agency that additional time will be required. Every conformance request is analyzed to verify that the criteria for approval are complied with:

1. The work to be performed is performed by a classification not already in the wage determination.
2. There is information to indicate that the classification is utilized in the area by the construction industry.
3. The proposed wage rates are conformable, i.e., bear a reasonable relationship to the wage rates in the determination.
4. There is agreement indicated among the parties involved.
5. The request is not for apprentices or trainees.

Conformance letter A (see Appendix A, p. 93) is to be used in responding to federal agency requests. Conformance requests, as with requests for project determinations, are accepted from some state agencies and other organizations. (See (B) of this Chapter.)

If the conformance notice is submitted to add a helper classification, Conformance Letter B (see Appendix A, p. 95) is issued. If the request must be denied for any reason not covered by the two conformance letters or

in the case of a disputed classification, the response is to be by custom letter.

Conformance notices and copies of the replies thereto are to be attached to the file copy of the wage determination to which they apply. Helpers classifications and other subclassifications, pursuant to long-standing DOL practice, can be added to a wage determination only where use of the classification prevails, the duties of the classifications are clearly defined and distinct from those of the journeyman classification, clearly defined and distinct from the laborer, and where the term "helper" is not synonymous with "trainee" in an informal training program.

F. Appeals Procedure. The Assistant Regional Administrator or National Office personnel will receive protests and inquiries relating to wage determinations. These will include written, telephonic, or in-person inquiries. In coordination with the National Office, every effort should be made at the Regional Office level to resolve such matters. Wage determinations may be formally protested to the Administrator, Wage and Hour Division. (See 29 CFR 1.8.)

An "interested person" (see below) seeking reconsideration of a wage determination or of a determination regarding application of a wage decision should present a request in writing accompanied by a statement with any supporting data or other pertinent information. W-H will respond within 30 days (or notify the requestor within this time frame that additional time is needed).

If reconsideration has been sought and denied, an interested person may appeal to the Wage Appeals Board (Chapter II (D)) for review of the wage determination or its application.

An "interested person" is considered to include, without limitation:

(1) Any contractor, or an association representing a contractor, who is likely to seek or to work under a contract containing a particular wage determination, or any laborer or mechanic, or any labor organization which represents a laborer or mechanic, who is likely to be employed or to seek employment under a contract containing a particular wage determination, and,

(2) Any Federal, State, or local agency concerned with the administration of a proposed contract or contract containing a particular wage determination issued pursuant to the Davis-Bacon Act or any of its related statutes.

The substantive correctness of Davis-Bacon determinations and W-H's decisions as to the classification of workers thereunder have been held not to be subject to judicial review. The courts have, on the other hand, reviewed wage determination cases relative to their compliance with constitutional, statutory or procedural requirements.

CHAPTER VII. Survey Planning and Tracking Procedures

Introduction. Since the United States is composed of over 3,000 individual counties, and since for Davis-Bacon survey purposes construction is divided into four distinct types (building, heavy, highway, and residential), a constant workload of more than 12,000 possible wage surveys confronts the Wage and Hour Division. Ideally, each of these counties and types of construction would be surveyed on an annual basis. However, with finite resources, it has not been possible to conduct that number of surveys.

As a result of the above situation, one key task of Wage and Hour staff is to identify those counties and types of construction most in need of a new survey. If a particular county and type of construction currently are covered by a wage determination based upon collective bargaining agreements (majority of workers covered by union contracts), and there is no indication of change in the union-open shop relationship, an updated wage determination may be based upon updated collective bargaining agreements (CBAs). On the other hand, if questions are raised that a wage determination based upon a CBA should now reflect open shop rates, or an open shop rate should be changed to the union scale, or an open shop rate is in need of updating, then a new survey should be considered.

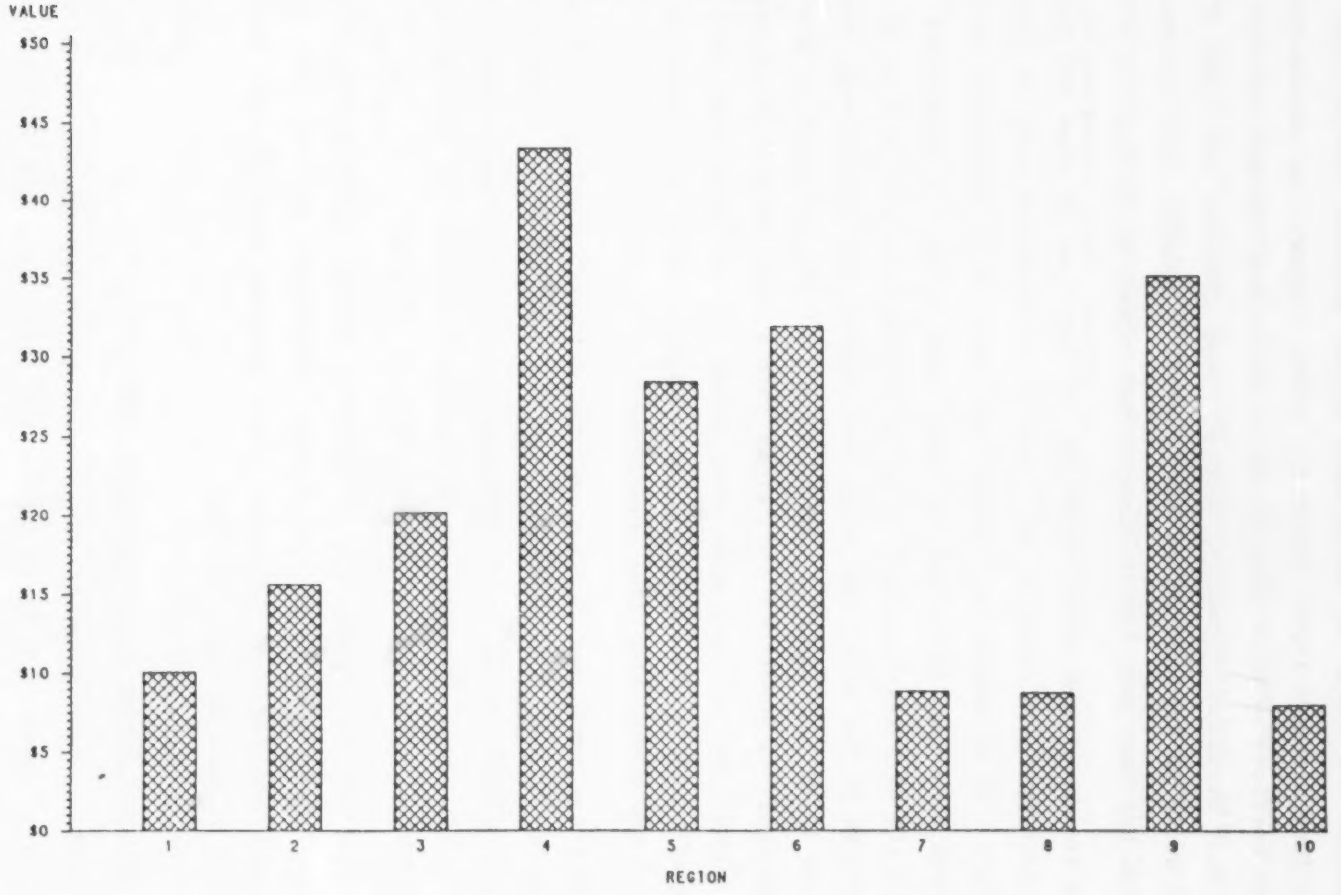
Surveys are performed by the Regional Offices according to an established schedule. Figure 6 sheds some light on the potential comparative survey burden by showing the value of construction initiations (1984), reported by the F. W. Dodge Division of McGraw-Hill Information Systems Co., in the geographical areas covered by the Regional Offices.

In an effort to improve the Davis-Bacon survey planning and tracking processes, three management tools were introduced in 1985 for use by the National and Regional Offices. This chapter examines the structure and purpose of each of these devices.

A. Regional Survey Planning Report (RSPR)

The RSPR provides RO staff with essential DB wage survey planning information in a convenient format. The following data are provided by Region, state, county, and type of construction: (1) number of active projects and their percent of the total,(2) number of Federally-owned projects and their percent of the total, (3) value of active construction projects and their

FIGURE 6
VALUE OF CONSTRUCTION CONTRACTS, BY ESA REGIONAL OFFICE, 1984
(UNIT: BILLIONS OF DOLLAR)



Source: CRA analysis of F.W. Dodge data

percent of the total, (4) value of Federally-owned construction projects and its percent of the total, (5) date of the most recent wage survey for each county, (6) whether the wage schedules for each county are union, open shop, or mixed, and (7) whether the wage determinations for each county are published general wage determinations or are issued on a project by project basis. Data are for the previous 12-month period ending March 31. Active projects included are those on which construction activity has occurred within the 12-month period of the report. These data are prepared by the NO and transmitted to each RO by May 15 of each year. An example of the RSPR is provided in Exhibit 6.

B. Uniform Survey Planning Procedure (USPP)

In addition to providing a systematic approach to surveying, effective management requires that the planning process be conducted in a uniform and informed manner. To this end, annual survey priorities are to be determined through use of a Uniform Survey Planning Procedure (USPP). This system utilizes six specific elements and criteria to weigh the need for surveys in each county and for each type of construction.

Element to be Considered	Criteria Indicating Survey Need
Date of most recent survey	Areas never surveyed or survey conducted more than two years ago.*
Number of active projects	Accounts for 5 percent or more of State total.
Value of active projects	Accounts for 5 percent or more of State total.
Procurement agency construction plans reported.	Major agency construction effort planned.
Complaint(s) and/or request(s) submitted by interested party(ies).	Complaint(s)/request(s) supported by payroll data.
General wage determination or project decision.	Preference to published general determinations.

*For counties never surveyed it is essential that the R.O. staff analyze all available data for indications of changes in market conditions. For those counties still not recommended for survey, indicate on the preliminary schedule of surveys why a survey is not called for.

Exhibit 6

REGIONAL SURVEY PLANNING REPORT

REGIONAL OFFICE: PHILADELPHIA DATE: MAY 15, 1985 TYPE OF CONSTRUCTION: RESIDENTIAL

STATE	COUNTY	ACTIVE PROJECTS: FROM APRIL 1, 1984 TO MARCH 31, 1985								DATE OF MOST RECENT SURV.	TYPE OF RATES U-O-M	TYPE OF DEC. Pub. PROJ. F - P	ADDITIONAL INFORMATION
		NUMBER		% OF TOTAL		VALUE 000		% OF TOTAL					
		ALL	FED. OWNED	ALL	FED. OWNED	ALL	FED. OWNED	ALL	FED. OWNED				
MD	MONTGOMERY	123	35	12%	3%	123,123	54,675	6%	2%	12-12-80	U	F	
MD	PR GEORGES	159	24	17%	2%	234,980	23,090	11%	1%	11-17-81	M	F	
MD	STAFFORD	23	3	4%	1%	178,000	100,000	8%	11%	03-04-79	O	P	

NOTE: "Percent of total" values refer to percent that county is of state, state is of Region, and Region is of the nation.

The following standard 10-step USPP is to be implemented:

Step 1: The NO issues the RSPR to all ROs on May 15. Also, the ROs are provided with information on key survey issues which might influence the RO survey schedule.

Step 2: Based upon the number of budgeted Full Time Equivalents available for survey work in the coming fiscal year, ROs estimate the number of wage data collection contacts which can be made. (The total number of RO contacts is equal to the number of general contractors, subcontractors, and other interested parties that need to be contacted to provide data for an RO survey.) Each full-time member should account for approximately 4,000 contacts per year; each full-time clerical and the Wage Specialist should account for approximately 2,000 contacts per year.

Step 3: ROs supplement the RSPR with information that might assist in developing a list of priority surveys. Such supplemental information might include: (1) complaints filed by contracting agencies, contractors, associations, and unions; (2) survey requests from interested parties; and (3) agency information regarding future construction activity. Using this information, develop a priority listing of surveys to be conducted in the coming fiscal year.

Step 4: ROs compute the number of contacts to be associated with each priority survey. Continue this process until priority surveys account for all staff contacts available. For building and residential construction, assume that an average of 10 contacts will be required for each project; for highway and heavy, assume 3 contacts per project.

Step 5: ROs compute the number of counties covered by the surveys identified in Step 3 above. If this amount does not satisfy your program plan for counties to be surveyed, identify surveys to be conducted by state and other agencies which will account for the additional counties to be covered by wage surveys in the coming fiscal year.

Step 6: Based upon the surveys identified in Steps 3 and 4 above, ROs prepare a preliminary schedule of RO surveys for the coming fiscal year. For each survey, list the type of construction, anticipated start and completion dates, and the counties to be covered. Also provide the number of counties, projects, and contacts estimated to be involved. Provide these

data separately by primary data collector (WH, HUD, etc.). An example of an RO survey schedule is provided as Exhibit 7. The preliminary RO survey schedule is to be transmitted to the NO Division of Wage Determinations by June 15. The proposed schedules will be reviewed and, if necessary, modified to meet National program needs.

Step 7: After all preliminary schedules have been approved by the NO, NO staff will assemble a national survey schedule for the fiscal year. That schedule will be transmitted by the NO to the major national contractor and labor organizations for their review and comment by July 15.

Step 8: Organization comments and suggestions will be assembled at the NO and provided to affected ROs. Organizations proposing changes in the schedule will be requested to provide sufficient payment evidence which supports their perceived need for alternative survey locations. Final RO survey schedules will be established by September 1.

Step 9: By September 15, the final fiscal year survey schedule will be disseminated to all ROs and interested organizations.

Step 10: RO progress in initiating and completing each planned survey will be tracked by the NO throughout the fiscal year.

A summary of the planning procedure is presented in Exhibit 8.

C. Wage Determination Automated Tracking System (WD-ATS)

A Wage Determination Automated Tracking System has been developed to improve management of the Davis-Bacon program. The computerized system contains all W-H and other agency D-B wage survey schedules and information on the status of surveys in progress and completed.

As surveys are completed, reviewed and approved, and appropriate wage determinations issued, WD-ATS and RSPR files are updated. All proposed changes to survey schedules must be transmitted to the Division of Wage Determinations for approval and WD-ATS entry.

EXHIBIT 7

PRELIMINARY SCHEDULE OF SURVEYS

REGIONAL OFFICE ATLANTA DATE JUNE 19, 1985 PRIMARY DATA COLLECTOR WAGE AND HOUR

SURVEY NAME & NUMBER *		TYPE OF CONSTRUCTION	ANTICIPATED SURVEY DATES		NAMES OF COUNTIES COVERED	WORKLOAD DATA NUMBER OF		
			START	COMPLETE		COUNTIES	PROJECTS **	CONTACTS
Covington	86-MS-005	BUILDING	01-01-86	03-31-86	Covington Forest Jeff Davis Jones Lamar Marion Walthall Perry Green George Stone Wayne	12	144	1,440
Palm Beach	86-FL-006	BUILDING	01-01-86	03-31-86	Palm Beach Martin	2	1,619	16,190
Cannon	86-TN-007	BUILDING	01-01-86	03-31-86	Cannon Dekalb Van Buren Warren White	5	16	160
Dade	86-FL-009	BUILDING	04-01-86	06-30-86	Dade	1	2,146	21,460
Anson	86-NC-010	BUILDING	04-01-86	06-30-86	Anson Cabarrus Rowan	3	132	1,320

*NAME DESIGNATED SHOULD BE THE PRINCIPAL CITY OR COUNTY TO BE COVERED. A SEVEN (7) DIGIT NUMBER IS TO BE ASSIGNED TO EACH SURVEY. IT SHOULD REFLECT THE FISCAL YEAR (86), TWO (2) CHARACTER STATE CODE (FIPS), AND A THREE DIGIT SEQUENTIAL NUMBER INDICATING THE SURVEY PRIORITY WITHIN THE REGION (001, 002, etc.).

**ESTIMATED

Exhibit 8

SUMMARY OF THE

UNIFORM SURVEY PLANNING PROCEDURE

STEP	LEAD AGENCY	DUE DATE	ACTION
1	NO	May 15	Issue RSPR and Provide ROs with Information on Major Survey Issues.
2	RO		Estimate Staff Contact Capacity.
3	RO		Develop Proposed Priority Survey Listing.
4	RO		Identify Surveys within Capacity.
5	RO		Compute Counties Covered by Priority Surveys and Add Other Agency Surveys to Reach County Target.
6	RO	June 15	Submit Proposed RO Survey Schedule to NO.
7	NO	July 15	Assemble and Submit Proposed National Survey Schedule to Interested Organizations.
8	NO	Sept. 1	Accommodate Organization Suggestions.
9	NO	Sept. 15	Issue FY Survey Schedule.
10	NO	Oct. 1	Track Survey Progress.

APPENDICES

READEX FICHE

APPENDIX A

FORMS AND FORM LETTERS

Conformance Letter (A & B):

Page

Responds to contracting agency's request for additional classifications and wage rates. 93-96

Interested Party Survey Notification Letter:

This letter is used to notify local and national parties of interest as to an impending wage survey. 97

Congressional Survey Notification Letter:

This letter is used to notify Members of Congress when a wage survey is being initiated in their areas. 98

Survey Transmittal Letter:

This is a transmittal letter to accompany the survey instrument (WD-10). 99

Information Acknowledgement Letter:

This form is to be sent to all parties furnishing wage payment data in response to an on-going wage rate survey. 101

Form WD-3:

This form reflects any modifications of the project wage decision and becomes a part of the original wage determination. 102

Follow-Up Card:

This is a reminder card sent to survey non-respondents. 103

Form WD-10:

This form is sent to general contractors and subcontractors and is issued to obtain wage payment and employment data. 104

Form WD-22:

See Chapter V (11) in determining prevailing wages by compiling the results of all information on the WD-22 Form. 106

Form WD-22a:

See Chapter V (i1) in recording information obtained from contractors on a project basis on the WD-22a Form. 107

Active Project File Form:

This form is used to order a file of active construction projects for the type/geographic area reference frame requested. 108-110

SF-308:

This form is used by the requesting authority to request a determination for use on a specified project. Please note that it is the responsibility of W-H to complete this form to reflect the decision number, date of decision, etc. 111

Management Information Worksheet:

This form is to be completed for each survey and transmitted to the NO. It provides data on the dimensions of the survey and level of effort expended. 112-114

Construction Wage Survey Diary Sheet:

This form is to be completed for each survey and transmitted to the NO. It provides information on the time spent by each employee on the various survey tasks. 115

CONFORMANCE LETTER A

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

RE: Additional Classifications and Wage Rates (Code of Regulations, 29 CFR Part 5, Subpart A, section 5.5(a)(1)(ii)).

This is in response to your request, dated _____, proposing the addition of a certain classification(s) and wage rate(s) to Wage Decision No. _____ as it applies to a contract for the _____

_____

at _____.

The proposed additional classification(s) and wage rate(s) is (are):

_____

_____.

☐ We will not be able to respond within 30 days of our receipt(_____) of your proposal because we find that it raises issues or questions not readily subject to resolution.

☐ The request is approved as submitted.

☐ The request is approved except for

_____.

(This (these) classification(s) cannot be approved for the reason(s) listed on the reverse side.)

☐ The request cannot be approved. The subject section of the Regulations sets forth criteria for approval of additional classifications and wage rates. The proposal as presented fails to meet one or more of those criteria as described below:

( )A. The work to be performed by the classification(s) is performed by a classification(s) already included in the wage determination (5.5(a)(1)(ii)(A)[1]). The appropriate classification(s) in the wage determination

is (are)_____.

( )B. There is no information to indicate that the classification is utilized in the area by the construction industry (5.5(a)(1)(ii)(A)[2]).

( )C. The proposed wage rate(s), including any bona fide fringe benefits, does (do) not bear a reasonable relationship to the wage determination (5.5(a)(1)(ii)(A)[3]). Please note the wages listed in the determination for

_____.

( )D. The proposed action does not reflect concurrence of the ____ contractor, ____ employees (if known, so indicate if not known) or their representatives, ____ contracting officer. (5.5(a)(1)(ii)(B))

( )E. Apprentices or trainees (by whatever name) are permitted to work at a rate less than that specified in the wage determination only when they are employed pursuant to and individually registered in a program approved by the appropriate Federal or State agency. Employees not so registered must be paid no less than the applicable wage rate on the wage determination for the classification of work actually performed. (5.5(a)(4))

This matter is subject to further review if any interested party should wish to present additional information for consideration.

If there are any questions, please contact _____ at _____.

Sincerely,

Raymond L. Kamrath
Chief, Branch of Construction
Contract Wage Determinations

CONFORMANCE LETTER B

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

RE: Additional Classifications and Wage Rates (Code of Regulations, 29 CFR Part 5, Subpart A, section 5.5(a)(1)(ii)).

This is in response to your request, dated _____, proposing the addition of a certain classification(s) and wage rate(s) to Wage Decision No. _____ as it applies to a contract for the _____

_____

at _____.

The proposed additional classification(s) and wage rate(s) is (are):

_____

_____.

☐ We will not be able to respond within 30 days of our receipt(_____) of your proposal because we find that it raises issues or questions not readily subject to resolution.

☐ The request is approved as submitted.

☐ The request is approved except for

_____.
(This (these) classification(s) cannot be approved for the reason(s) listed on the reverse side.)

/_____/ The request cannot be approved. Helper classifications and other subclassifications can be, pursuant to long standing practice, added to a wage determination where the use of helpers is an established prevailing practice, where the duties of the helpers are clearly defined and distinct from those of the journeyman classification, clearly defined and distinct from the laborer, and where the term "helper" is not synonymous with "trainee" in an informal training program. Any request for the addition of such classification(s) should be accompanied with sufficient information to support a contention that the above criteria have been met.

This matter is subject to further review if any interested party should wish to present additional information for consideration.

If there are any questions, please contact _____ at _____.

Sincerely,

Raymond L. Kamrath
Chief, Branch of Construction
Contract Wage Determinations

INTERESTED PARTY SURVEY NOTIFICATION LETTER

U.S. Department of Labor

Deputy Under Secretary for
Employment Standards
Washington, D.C. 20210

Dear Sir or Madam:

This is to advise you of a Davis-Bacon wage survey to be conducted within your jurisdiction. The Davis-Bacon and related Acts require payment of locally prevailing wage rates and fringe benefits to employees of contractors and subcontractors performing work on federally financed or assisted construction projects. The Wage and Hour Division of the U. S. Department of Labor is responsible for conducting prevailing wage surveys to establish the wage rates to be included in wage determinations applicable to such construction projects.

This office will begin collecting wage payment information on ____(type) construction projects in the county(ies) of _____(list)___ in (State) on ____(date)____. We will be soliciting information on wages and fringe benefits paid on ____(type)___ construction projects that were under construction during the period from ____(date)___ through ____(date)___. Data must be received by ____(date)___ to be included in the survey.

The wages being paid construction workers in their area regardless of whether or not they work on federally financed or assisted projects, will affect the prevailing wage determinations issued as a result of this survey. The identity of respondents will be kept confidential.

Please promptly notify interested parties in your organization and request their participation regarding this survey. We would appreciate your urging their cooperation in the survey. Any questions concerning this survey or relevant information on construction wage rates should be directed to:

_____

_____

_____

_____

Commercial Telephone Number: _____

FTS Telephone Number: _____

Sincerely,

RA, ARA, Regional Wage Specialist
(signature level to be determined
by RA in accordance with Regional
practice)

CONGRESSIONAL SURVEY NOTIFICATION LETTER

U.S. Department of Labor

Employment Standards Administration
Washington, D.C. 20210

Dear _____(Congressman (woman)/Senator _____:

This is to advise you of a Davis-Bacon Wage Survey to be conducted within your (State/District). The Davis Bacon and related Acts require payment of locally prevailing wage rates and fringe benefits to employees of contractors and subcontractors performing work on federally financed or assisted construction projects. The Wage and Hour Division of the U. S. Department of Labor is responsible for conducting prevailing wage surveys to establish the wage rates to be included in wage determinations applicable to such construction projects.

This office will begin collecting wage payment information on ____(type) _____ construction projects in the county(ies) of ____(list) _____ within your (State/District) on _____ (date) _____. We will be soliciting information on wages and fringe benefits paid on ____ (type) _____ construction projects that were under construction during the period from _____ (date) _____ through _____ (date) ____. Data must be received by _____ (date) _____ to be included in the survey.

The wages being paid construction workers in your (State/District) regardless of whether or not they work on federally financed or assisted projects, may affect the prevailing wage determinations issued as a result of the survey in this area. The identity of respondents will be kept confidential.

If you have any inquiries from your constituents regarding this survey, we would appreciate your urging their participation in the survey. Any questions concerning this survey or relevant information on construction wage rates should be directed to:

_____

_____

_____

_____

_____

Commercial Telephone Number: _____

FTS Telephone Number: _____

Sincerely,

RA, ARA Regional Wage Specialist
(signature level to be determined by RA in accordance with Regional practice)

SURVEY TRANSMITTAL LETTER

U.S. Department of Labor

Employment Standards Administration
Washington, D.C. 20210

Reply to the Attention of

DATE: _____

Dear Sir or Madam:

The Davis-Bacon and related prevailing wage statutes specify that laborers and mechanics employed on construction projects subject to Davis-Bacon requirements may not be paid less than the wages prevailing in the area on projects of a similar character. The Secretary of Labor is required to determine what these prevailing rates and fringe benefits are. For this purpose we are conducting a survey of wages and fringe benefits paid on _____ construction projects under construction or completed during the time period _____ to _____ in the county(ies) of _____ in _____ .

It is our understanding that your firm is or recently has been engaged in the construction of the project(s) described in the enclosed form(s).

The wages being paid by your firm on this project (regardless of whether it is Federal or non-Federal) affect the prevailing wage scale in this locality. They should therefore be considered in determining the prevailing wage rates and fringe benefit payments for future construction in this area.

You will greatly assist the Labor Department in the compilation of the wage data for this survey by completing the enclosed report and returning it to this office. A self-addressed envelope which requires no postage is enclosed. Data must be received by _____ to be included in the survey.

For your convenience we have listed on the reverse side of this letter mechanic and laborer occupations common to building and heavy construction. Where practical, please utilize these classifications in reporting. However, other classifications may be written in if necessary. If you employed workers classified as "helpers", please report them separately under the appropriate trade designation, e.g., "carpenter helper", "electrician helper". If you are a General or Prime contractor it would be appreciated if you would include a list of subcontractors and their addresses.

All information provided by respondents will be kept confidential. If you submit information for this survey, you will receive an acknowledgement from this office that the material you submitted was received. If you do not receive an acknowledgement within 10 days after forwarding your material, you should contact this office. Thank you for your cooperation.

If your company has been employed on any other project meeting the criteria of the survey we would appreciate it if information for that project is also provided.

Sincerely,

RA, ARA, Regional Wage Specialist
(signature level to be determined
by RA in accordance with Regional
practice)

Enclosures

Survey Transmittal Letter

(reverse side)

Mechanic and Laborer Classifications for Building and Heavy Construction

1. Heat and Frost Insulators
2. Boilermakers
3. Bricklayers
4. Carpenters
5. Cement masons
6. Drywall finishers
7. Drywall hangers
8. Electricians
9. Glaziers
10. Heating, A/C mechanics
11. Insulators, Batt, Blown, other
12. Ironworkers, structural
13. Ironworkers, reinforcing

Laborers:

14. Laborers, unskilled
15. Airtool Operators
16. Drillers, wagon drill
17. Landscape workers
18. Mason tenders
19. Mortar mixers
20. Pipelayers
21. Plasterers' tenders
22. Lathers
23. Marble setters
24. Painters, brush
25. Painters, steel
26. Paperhangers
27. Piledrivermen
28. Pipefitters
29. Plasterers
30. Plumbers

Power equipment operators:

31. Aircompressors
32. Backhoes
33. Bulldozers
34. Cranes, derricks, draglines
35. Concrete finishing machines
36. Graders
37. Hoists
38. Loaders, front end
39. Mechanics
40. Mixers
41. Oilers
42. Piledrivers
43. Pumps
44. Rollers
45. Scrapers
46. Shovels
47. Tractors
48. Trenching machines
49. Roofers
50. Sheetmetal workers
51. Softfloor (carpet) layers
52. Stonemasons
53. Terrazzo workers
54. Tilesetters
55. Truck drivers
56. Waterproofers
57. Welders

NOTE: Do not report on employees in an approved apprentice program or those being trained in a formal or informal training program. Workers employed as "helpers" should be reported and be identified by trade classification, e.g., "carpenter helper", "electrician helper".

INFORMATION ACKNOWLEDGEMENT LETTER

U.S. Department of Labor

Employment Standards Administration
Washington, D.C. 20210

Reply to the Attention of:

DATE: _____

Dear Sir or Madam:

This is to acknowledge receipt on _____(date)_____ of (no.) pages of wage payment information furnished by you in connection with the survey of _____(type)_____ construction in _____(list)_____ County/Counties of (State).
If this does not agree with your records, please contact this office as soon as possible. Only that information received prior to (date) may be considered in this survey. Information received after that date will only be used to determine when future surveys will be conducted in this area.

Thank you for your concern and cooperation in this survey effort.

Sincerely,

RA, ARA, Regional Wage Specialist
(Signature level to be determined
by RA in accordance with Regional
practice)

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION

NOTICE OF MODIFICATION

TO:

	DATE OF THIS MODIFICATION	MODIFICATION NO.
DESCRIPTION OF WORK	DECISION NO.	EXPIRES
	COUNTY	STATE

Upon review of current data, changes as noted below are hereby directed. The rates in the enumerated wage determination decision, as amended by previous modifications, and as modified herein, are to be considered prevailing (or, in the case of the Federal Airport Act, as the minimum) in accordance with applicable law.

Basic Hourly Rates	Fringe Benefits Payments				
	H & W	Pensions	Vacation	App. TR.	Others

Form WD-3 (Rev. May 1976)

FOLLOW-UP CARD

REMINDER:

DAVIS-BACON WAGE SURVEY

About two weeks ago you were sent a U.S. Department of Labor request for wage information to be used in a Davis-Bacon wage survey. We would greatly appreciate your response.

Remember, all information provided by respondents will be confidential.

(If the information has already been sent, please disregard.)

Thank you.

Return Address

Telephone Number

OMB No. 1215-0046
Expires: 07/31/87

Report of Construction Contractor's Wage Rates

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

NOTE This form is used by the **U.S. DEPARTMENT OF LABOR** to determine the locally prevailing wage rates under the Davis-Bacon and Related Acts. The submission of wage data is encouraged but is voluntary. This is an optional form provided to ensure consistency in submission of wage data. Respondents may use an alternate form if all the information requested is included. The identity of the Respondent will be held in confidence. **PLEASE SEE INSTRUCTIONS ON REVERSE SIDE.**

1 Contractor Name, Address, Telephone

2 Project Name, Description, and Location *(Include County)*

3 Contract Type ☐ General/Prime ☐ Sub
If General Attach Subcontractor List

4 Approximate Value of
Project $ _____
Subcontract $ _____

5 Starting Date

6 Completion Date
☐ Estimated ☐ Actual

7 Type of Construction ☐ Residential
☐ Building ☐ Highway
☐ Heavy
Stories _____
Units _____

8 Project is Subject to: ☐ Federal *(Davis-Bacon)* Wage Determination
☐ State Wage Determination ☐ Neither

9 Classification of Employees *(i.e., Carpenters, Electricians, Laborers, Etc.)*	10 Is Contractor Party to a Collective Bargaining Agreement Under Which Workers Were Paid? Yes	10 No	11 Workweek Ending Date For Peak Number Employed	12 Peak Number Employees	13 Basic Hourly Rate	14 Fringe Benefits *(List Hourly Rate or Percentage of Basic Hourly Rates or Other Amounts)* Health & Welfare	Pension	Holiday & Vacation	App. Training

15 Remarks

Wage rates paid cannot be considered in the determination of Davis-Bacon prevailing wage rates unless such information is provided as requested above.

16 Submitted By

Name and Title *(Please Print)* _____ Signature _____ Telephone Number _____

17 Date Report Submitted

Form WD-10
Rev. June 1985

INSTRUCTIONS – FORM WD-10

(Correct any of the preprinted information in items 1–8. If not preprinted, please complete.)

1. Self-explanatory.

2. Provide the name of the project, a short description, the street address, city, county and state.

3. If a general or prime contract, on a separate sheet identify by name, address and telephone number all of your subcontractors engaged on this project. Do not include those firms which supply materials only.

4. General or Prime Contractors Only. State the total project value.

   Subcontractors Only. State the approximate value of your subcontract (not of the entire general contract).

5. General or Prime Contractors Only. State the date that any work started on the project.

   Subcontractors Only. Indicate the date you started actual work on the project.

6. General or Prime Contractors Only. Give the project completion date and indicate if the date is actual (that is, already completed) or estimated.

7. For residential building projects, state the number of stories and units.

8. For all projects, indicate whether the project is subject to a Federal (Davis-Bacon) wage determination, a State wage determination, or neither. If project is subject to both a Federal and State wage determination check both boxes.

9. List all classifications employed on the project. Do not include employees in an approved apprentice program or those being trained in a formal training program.

10. Indicate by a check mark whether the contractor is signatory to a collective bargaining agreement under which the workers in each classification listed are paid.

11. Indicate the ending date (mo., day, yr.) of the workweek in which the wage rates were paid to each classification.

12. For each classification used on this project please fill in number employed during the week of peak employment of each craft. Indicate the number of employees paid at each given rate.

13. Indicate the basic hourly rate of pay for each classification. Do not give a pay range. If pay is for piece work, break it down to an hourly rate of pay for each piece rate worker. Do not group piece rate workers with one average hourly rate.

14. Indicate any bona fide fringe benefits* paid each classification under the following categories:

a. Health and Welfare	c. Holiday and Vacation
b. Pension	d. Apprentice Training (App. Training)

Give the hourly rate, or the percentage of the basic hourly rate paid, or other amounts (e.g., $15 per week, $30 per month) under the heading that most clearly describes the fringe benefit. If necessary, clarify or list any bona fide fringe benefit which does fit into the above categories in "Remarks" box.

15–17. Self-explanatory.

---

*Typically, bona fide fringe benefits include:

- Health and Welfare – medical or hospital care, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability or sickness or accident insurance.
- Pensions – Retirement or Annuity cost or cost of insurance to provide such a benefit.
- Holiday and Vacation.
- Apprentice Training – defrayment of cost of apprenticeship or similar training programs.

Report only the contributions made or costs incurred by the contractor or subcontractor (not the contributions or amounts paid by employees) for any of the types of fringe benefits noted above. Do not report any fringe benefit payments required by either Federal, State, or local law, such as worker's compensation or unemployment insurance.

☆ U.S. Government Printing Office: 1985—461-532/32718

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

CRAFTS	Union-Management negotiated rates	Rates in last decision, No. _____ Date _____	Recommended rates	Total No. employed No. employed at controlling rate	Rule of decision followed (i.e., M, or on Ar.)
1 Asbestos workers					
2 Boilermakers					
3 Bricklayers					
4 Carpenters					
5 _____					
6 _____					
7 Cement masons					
8 _____					
9 Electricians					
10 _____					
11 _____					
12 Glaziers					
13 Ironworkers, structural & ornamental					
14 Ironworkers, reinforcing					
15 _____					
16 Laborers					
17 Laborers					
18 Air tool op. (jackhammer, vibrator)					
19 Mason tenders					
20 Mortar mixers					
21 Pipelayers					
22 Plasterers' tenders					
23 Lathers					
24 Marble setters					
25 _____					
26 Painters, brush					
27 Painters, structural steel					
28 _____					
29 Piledrivermen					
30 Plasterers					
31 Plumbers & pipefitters					
32 _____					
33 _____					
34 Roofers					
35 _____					
36 _____					
37 Sheet metal workers					
38 _____					
39 Soft floor layers					
40 Stonemasons					
41 Terrazzo workers					
42 _____					
43 _____					
44 Tile setters					
45 Truck drivers					
46 _____					
47 _____					
48 _____					
49 Power Equipment Operators:					
50 _____					
51 _____					
52 _____					
53 _____					
54 _____					
55 _____					

State _____ County _____ Type of Const. _____ Date _____ Form WD-22 (Rev. 12/83)

Project Wage Summary

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

PROJECT NO.		PROJECT NO.		PROJECT NO.		PROJECT NO.	
Name & Description:		Name & Description:		Name & Description:		Name & Description:	
Location:		Location:		Location:		Location:	
Date Completed or % Comp.		Date Completed or % Comp.		Date Completed or % Comp.		Date Completed or % Comp.	
Approximate Cost:		Approximate Cost:		Approximate Cost:		Approximate Cost:	
Hourly Rate Paid	No. Employed	Hourly Rate Paid	No. Employed	Hourly Rate Paid	No. Employed	Hourly Rate Paid	No. Employed
1							
2							
3							
4							
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State _____ **County** _____ **Type of Const.** _____ **Date** _____

Form WD-22a (Rev. 12/83)

Davis-Bacon Survey Universe Request On
Active Construction Projects

A. Control Data

1. Regional Office submitting request.

a. Name _____ b. Number _____

2. Regional Office Contact.

a. Name _____

b. Title _____ c. FTS No. _____

3. RO Mailing Address.

a. Street _____

b. State _____ c. Zip Code _____

4. Request Date.

a. Day _____ b. Month _____ c. Year _____

5. Survey Date.

a. Day _____ b. Month _____ c. Year _____

B. Request Data

1. Type of request.

a. Batch _____
1) Initial _____
2) Final _____

b. Emergency _____
Concurring NO Official _____

2. Type of construction to be surveyed.

a. Building _____ b. Heavy _____ c. Highway _____

d. Residential * _____

3. Telephone description of project list(s).

a. Yes _____ b. No _____

* Dodge data are incomplete for residential construction covering buildings with four household units or less.

4. State(s) and county(ies) to be surveyed. (Attach continuation sheet if more space is required.)

   a. State _____

   b. Counties:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

5. Calendar period of survey (reference period).

   a. From:
      1) Month _____ 2) Day _____ 3) Year _____

   b. Through:
      1) Month _____ 2) Day _____ 3) Year _____

c. Special Instructions

Davis-Bacon Survey Universe Request

Instructions

A. Control Data

1. Provide the a. name and b. number of the RO submitting the request. (RO I, II, etc.)

2. Provide the a. name, b. title, and c. FTS telephone number of the individual in the RO to be contacted regarding any questions concerning this request. Unless otherwise instructed, the Dodge slips requested will be forwarded to this individual's attention.

3. Furnish the RO mailing address (a. Street, b. State, and c. zip code) to which project lists and Dodge slips are to be mailed.

4. Furnish the a. day, b. month, and c. year of this request. Allow two to three weeks for receipt of project lists and Dodge slips. Telephone inquiries may be made to CRA staff at 8-854-4208.

5. Furnish the a. day, b. month, and c. year when it is anticipated that this survey will begin. Unless instructed otherwise, this date will determine the order of priority in which Dodge slips will be identified and transmitted to the ROs.

B. Request Data

1. Indicate the type of request: a. Batch--routine survey part of approved RO plan; 1) Initial--request to gauge proposed survey number of projects/RO workload, etc.;—project list returned to RO only for analysis or 2) Final-project list to be transmitted to RO and F. W. Dodge for forwarding of slips; or b. Emergency—unanticipated survey for which universe data and/or slips required in less than the usual two to three week period.

2. Indicate the type(s) of construction projects to be surveyed.

3. Indicate whether CRA staff should telephone a description of the project list before mailing to the RO.

4. Note the State(s) and county(ies) for which universe data are required. Attach a separate sheet if additional space is required.

5. Note the timeframe in which active projects should be placed, in terms of a. beginning 1) month, 2) day, and 3) year; and b. ending 1) month, 2) day, and 3) year.

C. Special Instructions

Provide any additional information required for proper processing of this request.

Request For Wage Determination And Response To Request

(Davis Bacon Act as Amended and Related Statutes)

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

FOR DEPARTMENT OF LABOR USE

Response To Request

☐ Use area determination issued for this area

_____

_____

☐ The attached decision noted below is applicable to this project

Decision Number

Date of Decision

Expires

Supersedes Decision Number

Approved

Mail Your Request To:

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Branch of Construction Contract Wage Determinations
Washington, D.C. 20210

Requesting Officer *(Typed name and signature)*

Department, Agency, or Bureau | Phone Number

Date of Request | Estimated Advertising Date | Estimated Bid Opening Date

Prior Decision Number *(If any)* | Estimated $ Value of Contract: ☐ Under ½ Mil ☐ 1 to 5 Mil ☐ ½ to 1 Mil ☐ Over 5 Mil | Type of Work: ☐ Bldg. ☐ Highway ☐ Resid. ☐ Heavy

Address to which wage determination should be mailed. *(Print or type)*

Location of Project *(City, County, State, Zip Code)*

Description of Work *(Be specific) (Print or type)*

CHECK OR LIST CRAFTS NEEDED
(Attach continuation sheet if needed)

___ Asbestos workers
___ Boilermakers
___ Bricklayers
___ Carpenters
___ Cement masons
___ Electricians
___ Glaziers
___ Ironworkers
___ Laborers *(Specify classes)*
___ _____
___ _____
___ _____
___ Lathers
___ Marble & tile setters, terrazzo workers
___ Painters
___ Piledrivermen
___ Plasterers
___ Plumbers
___ Roofers
___ Sheet metal workers
___ Soft floor layers
___ Steamfitters
___ Welders—rate for craft
___ Truck drivers
___ Power equipment operators *(Specify types)*
___ _____
___ _____
___ _____
___ _____
___ _____
___ _____

Other Crafts

___ _____
___ _____
___ _____
___ _____

308-104
NSN 7540-00-105-0078

★U.S. Government Printing Office 1985—494-273/20411

Standard Form 308 (Rev. May 1985)
U.S. Department of Labor —29 CFR Part 1

WAGE DETERMINATION SURVEY

MANAGEMENT INFORMATION WORKSHEET
(Complete for each survey and transmit to NO)

A. Control Blocks

1. Survey Identification

a. Survey No._____ b. State_____
c. Counties_____

_____

2. Regional Office Name and Number

a. Name_____

b. Number_____

3. Survey Dates

a. Start Mo.___Day___Yr.___

b. End Mo.___Day___Yr.___

c. No. of Calendar Days____

4. Staff Responsible

a. Wage Specialist_____

b. Wage Analyst(s)_____

5. Part of Approved Survey Plan

a. Yes [ ]

b. No [ ]

6. Name and Title of Individual Completing Worksheet

a. Name_____

b. Title_____

7. Date Worksheet Completed Mo.___Day___Yr.___

B. Survey Management Information

1. Agency Conducting Survey

a. WH Regional Office [ ] d. DHUD [ ]

b. State [ ] e. Other [ ]

c. Contractor [ ] Specify_____

2. Construction Type and Number of Counties Covered

Construction Type		Number of Counties Covered
a. Building	[ ]	_____
b. Heavy	[ ]	_____
c. Highway	[ ]	_____
d. Residential	[ ]	_____
e. Other Specify_____	[ ]	_____
	Total	_____

3. Survey Universe, Contacts, and Responses

Number	Projects	Contractors		
		Total	General	Sub
a. Identified				
b. In-Scope Contacts				
c. Responses Received				
d. Usable Responses				
e. Usable Response Rate				

4. Number of Crafts Represented _____

5. Survey Follow-up Efforts

a. No. Letters Sent _____

b. No. Phone Calls Made _____

c. No. Personal Visits _____

Total _____

6. Number of WH Regional Office Person Hours Expended

a. Total _____

b. Wage Specialist _____

c. Wage Anaylst(s) _____

d. Clerical Staff _____

e. Compliance Officer _____

f. Other

Specify_____ _____

INSTRUCTIONS FOR COMPLETING SURVEY MANAGEMENT INFORMATION WORKSHEET

DEFINITIONS - Survey: For purposes of this management information worksheet, a "survey" is defined as a single data collection initiative to obtain information used in determining "prevailing wage rates" under the Davis-Bacon and Related Acts. Such an initiative may cover one or more counties, and one or more types of construction.

In-scope Contacts: In-scope contacts are those contacts from which we would expect a usable response. Not included are material suppliers, subcontractors without employees, subcontractors not yet employed on the project, etc.

A. Control Blocks

1. Identify the survey:
   a. Enter the survey No.
   b. Enter the name of the State.
   c. List the names of the Counties. If statewide enter "Statewide".
2. Furnish the name and number of the RO submitting this survey.
3. Note the following survey dates:
   a. Date the first letters and WD-10's (or comparable forms) were transmitted soliciting wage data.
   b. Date recommended wage determinations and/or survey results were transmitted to the NO.
   c. Indicate the number of calander days between "a" and "b".
4. Furnish the names of the Wage Specialist and Wage Analyst(s) who worked on this survey.
5. Indicate whether this survey effort was part of the approved RO survey plan, or whether this was an "unscheduled" survey.
6. Self-explanatory.
7. Self-explanatory.

B. Survey Management Information:

1. Check the box indicating the agency staff conducting this survey effort.
2. Check the box(es) indicating the type(s) of construction covered in this survey effort. Also, for each type checked, note the number of counties in which wage data was solicited.
3. Fill in the number of:
   a. projects identified in the survey universe, general contractors, and subcontractors associated with that universe.
   b. in-scope projects for which general and/or subcontractors were contacted, and in-scope general and/or subcontractor contacted.
   c. Responses received for surveyed projects, contractors and subcontractors.
   d. responses received in "c" which provided usable survey data, and all appropriate contractor totals. In "e", note the usable response rates, which may be computed as follows:

$$\text{Usable Response Rate} = \frac{\text{Usable Responses (d)}}{\text{No. In-Scope Contacts (b)}} \times 100$$

4. Note the number of crafts for which usable survey data were provided.
5. Note the Number of:
   a. letters,
   b. phone calls, and
   c. personal visits initiated to follow-up with survey non-respondents, or to clarify or obtain additional survey data. Also note the sum of a, b, and c.
6. Record the number of person hours expended on this particular survey effort: Total, and for each occupational title noted.

* U. S. GOVERNMENT PRINTING OFFICE: 1979—302-077

U.S. DEPARTMENT OF LABOR EMPLOYMENT STANDARDS ADMINISTRATION WAGE AND HOUR DIVISION	CONSTRUCTION WAGE SURVEY DIARY SHEET

1. Area Covered: _____ *(State)*

_____ *County(ies)*

2. Type of Survey: ☐ Building ☐ Heavy ☐ Highway ☐ Residential ☐ Other (explain)

3. Date Initiated:

4. Office: ☐ RO ☐ NO

DATE	OFFICE	NAME AND POSITION	ACTIVITY	HOURS	HOURS SUB-TOTAL (NO ONLY)

Note: Remove top portion and mail to NO or appropriate RO.

Form WD-24
Sept. 1979

APPENDIX B

LIST OF PRINCIPAL STAFF IN WAGE DETERMINATIONS PROGRAM

ESA REGIONAL OFFICES, STATE COMPOSITION

REGION	STATE	REGION	STATE
I	Connecticut	VI	Arkansas
	Maine		Louisiana
	Massachusetts		New Mexico
	New Hampshire		Oklahoma
	Rhode Island		Texas
	Vermont		
II	New Jersey	VII	Iowa
	New York		Kansas
	Puerto Rico		Missouri
	Virgin Islands		Nebraska
III	Delaware	VIII	Colorado
	District of Columbia		Montana
	Maryland		North Dakota
	Pennsylvania		South Dakota
	Virginia		Utah
	West Virginia		Wyoming
IV	Alabama	IX	Arizona
	Florida		California
	Georgia		Guam
	Kentucky		Hawaii
	Mississippi		Nevada
	North Carolina		
	South Carolina		
	Tennessee		
V	Illinois	X	Alaska
	Indiana		Idaho
	Michigan		Oregon
	Minnesota		Washington
	Ohio		
	Wisconsin		

NATIONAL OFFICE CONTACTS FOR DAVIS-BACON WAGE DETERMINATIONS

Office of Program Operations:	
James L. Valin, Assistant Administrator	523-8353
Nancy M. Flynn, Deputy Assistant Administrator	523-8353
Division of Wage Determinations:	
Alan L. Moss, Director	523-7531
Ronald W. Merten, Special Assistant	523-7531
Harry H. Matsuura, Special Assistant	523-7531
Beverly F. Stewart, Secretary	523-7531
Branch of Construction Wage Determinations:	
Raymond L. Kamrath, Branch Chief	523-7455
Joyce Reid, Secretary	523-7455
Regions I, II, III & NC, SC, GA & FL:	
Phillip Gloss, Section Chief	523-7451
Julia Stone, Assistant	523-7437
Vacancy, Assistant	523-7451
Ruth Nixon, WD Clerk-Typist	523-7451
Analysts:	
Jean Barlow - VA, MD, DC	523-7437
Rose Broadwater - NY, ME, NH	523-7431
Abraham Brown, DE, RI, CT, PR, VI	523-7421
Willie Mae Foster - PA, MA, NJ	523-7451
Thomas Nesmith - GA, SC, FL	523-7431
Barbara Schaeffer - WV, VT, NC	523-7431
Regions V, VIII, IX, & X:	
Margaret Washington, Section Chief	523-7443
Kenneth Suggs, Assistant	523-7091
Terry Sullivan, Assistant	523-7421
Judith Brown, WD Clerk-Typist	523-7443
Analysts:	
Patricia Crepeau - CA, MI, NV	523-7443
James Hall - UT, MT, AK, ND, IN	523-7443
Leotha Jones - MN, OH, SD, HI	523-7091
Gladys Norris - CO, WY, WI, AZ	523-7437
Forest Randall - ID, OR, WA, IL, GU	523-7443
Regions V, VII, & MS, AL, TN, KY:	
John Frank, Section Chief	523-7431
Pamela Lee, Assistant	523-7431
Liz Moody, Assistant	523-7095
Verona Pitman, WD Clerk-Typist	523-7437
Analysts:	
Eleanora Bland - MO, NE	523-7431
Janice Hendrix - MS, AL, TN, KY	523-7421
Fannie Weston - KS, AR, OK	523-7455
Michael Williams - IA, TX, LA, NM	523-7431
Division of Contract Standards Operations:	
Sylvester L. Green, Director	523-7541
Branch of Construction Operations	
Rae E. Glass, Branch Chief	523-7541

REGIONAL OFFICE STAFF

As of 1-1-86

	NAME	TITLE
REGION 1	Janet Boyda	Wage Specialist
617-223-5565	Gertrude Allen	Wage Analyst
FTS-223-5565	Pat Flanagan	Clerk-Typist
REGION 2	Thomas Kelley	Wage Specialist
212-944-3354	Irving Miljoiner	Asst. to Wage Specialist
FTS-265-3354	Carrol Linder	Wage Analyst
	Vacancy	Wage Analyst
	Madeline Flores	Clerk-Typist
REGION 3	George Durbin	Wage Specialist
215-596-1197	Frances Barber	Wage Analyst
FTS-596-1197	Helen Klein	Wage Analyst
	Debra Killingsworth	Clerk-Typist
REGION 4	Donald Outland	Wage Specialist
404-347-2929	Mary Calhoun	Wage Analyst
FTS-257-2929	Eleanor Blanton	Wage Analyst (Trainee)
	Maureen Boyes	Wage Analyst
	Irene Lee	Wage Determination Clerk
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312-353-8848	Mary Johnson	Wage Analyst
FTS-353-8848	Sue Casterline	Wage Analyst
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FTS-758-5387	James Bachert	Wage Analyst
REGION 8	Art Kerschner, Jr.	Wage Specialist
303-837-5302	Del Lowry	Wage Analyst
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415-556-3663	Jerry McAteer	Wage Analyst
FTS-556-3663	Lynn Yee	Wage Analyst
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APPENDIX C

DAVIS–BACON REGULATIONS

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Office of the Secretary

29 CFR Part 1

Procedures for Predetermination of Wage Rates

AGENCY: Employment Standards Administration, Wage and Hour Division, Labor.

ACTION: Final rule.

SUMMARY: This document provides revised final Regulations, 29 CFR Part 1, which set forth the procedures for the predetermination of prevailing wage rates under the Davis-Bacon and Related Acts. These final regulations shift the publication of Davis-Bacon general wage determinations from the **Federal Register** to a GPO subscription item: *General Wage Determinations Issued Under The Davis-Bacon And Related Acts.* This change is in response to escalating charges to print material in the **Federal Register**, and the need for easier public/government access to general wage determinations information. Weekly **Federal Register** notice of new wage determinations and those being modified or superseded will continue.

EFFECTIVE DATE: January 3, 1986. See Supplementary Information below for dates of applicability.

FOR FURTHER INFORMATION CONTACT: Susan R. Meisinger, Deputy Under Secretary for Employment Standards Administration, U.S. Department of Labor, Room S-2321, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone: 202-523-6191.

SUPPLEMENTARY INFORMATION: The Wage and Hour Division of the Employment Standards Administration issues general wage determinations under the Davis-Bacon Act for geographic areas with a significant amount of Federal or Federally-assisted construction. Because of its wide circulation and initial low cost, the **Federal Register** has served as the publication medium for communicating such information since 1971.

In recent years, escalating charges to print material in the **Federal Register** have resulted in the use of alternative formats for the purpose of lowering printing costs. For example, the format was changed to double the amount of data provided on each page. However, these changes have led to serious user problems in locating, interpreting, filing, and duplicating published Davis-Bacon general wage determinations.

To remedy this situation, beginning January 3, 1986, Davis-Bacon general wage determinations will be published in a new special purpose document, *General Wage Determinations Issued Under The Davis-Bacon And Related Acts.* At the same time, publication of these wage determinations in the **Federal Register** will cease. However, weekly **Federal Register** notice of new general wage determinations, and those being modified or superseded will continue.

General Wage Determinations Issued Under The Davis-Bacon And Related Acts will be offered on a subscription basis through the Government Printing Office. On or about January 3, 1986, the first annual edition of the new publication will be issued. It will contain all Davis-Bacon general wage determinations currently in effect nationwide. Thereafter, weekly updates will be issued to subscribers via first class mail.

The new publication offers significant improvements over the current format used in the **Federal Register**. New features include expanded space between text areas, larger print, an easy-to-use index, and heavier paper. Also, pages will be in loose-leaf form, thereby facilitating the continuous maintenance of up-to-date information.

The publication will be divided geographically into three volumes: East, Central, and West. Subscriptions may be ordered from the Superintendent of Documents after October 15, 1985. Inquiries (after October 15) regarding availability and price ($277 per volume) may be directed to the Superintendent of Documents Order Desk at 202-783-3238. Note that regardless of when an order is placed, new subscribers will receive the current year's annual edition and all weekly updates for that year. For those not wishing to subscribe, the publication will be available at all 80 Regional Government Depository Libraries and many of the other 1,400 Government Depository Libraries across the nation.

A detailed description of the changed publication procedures will be published in the **Federal Register** from December 6, 1985 through December 27, 1985. Thereafter, brief weekly notices will describe how published general wage determinations may be obtained under the new procedures.

Classification

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Since, under the new publication process, notice of new, modified, and superseded wage determinations will continue in the **Federal Register**, it is found that this Regulation change is procedural. Therefore, notice and comment is unnecessary. This finding is made pursuant to 5 U.S.C. 553(b)(A).

Because no notice of proposed rulemaking is required under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) pertaining to regulatory flexibility analysis do not apply to this action. See 5 U.S.C. 601(2).

Because this rule does not require the collection or retention of information, it is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h).

List of Subjects in 29 CFR Part 1

Administrative practice and procedure, Government contracts, Labor, Minimum wages, Wages.

Accordingly, 29 CFR Part 1 is amended as set forth below.

Signed at Washington, D.C. on this 29th day of November 1985.

Susan R. Meisinger,

Deputy Under Secretary for Employment Standards.

Herbert J. Cohen,

Deputy Administrator, Wage and Hour Division.

PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

29 CFR Part 1 is amended as follows:

1. The authority citation for Part 1 continues to read as follows:

Authority: 5 U.S.C. 301; RS.161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 29 U.S.C. 259; 40 U.S.C. 276a—276a-7; 40 U.S.C. 276c; and the laws listed in Appendix A of this Part.

2. The Table of Contents to Part 1 is amended by adding an entry for Appendix C, following Appendix B.

3. In § 1.1, paragraph (c) is revised to read as follows:

§ 1.1 Purpose and scope.

* * * * *

(c) Procedures set forth in this part are applicable, unless otherwise indicated, both to general wage determinations for contracts in specified localities, and to project wage determinations for use on contract work to be performed on a specific project

* * * * *

4. In section 1.5, paragraph (b) is revised to read as follows:

§ 1.5 Procedure for requesting wage determinations.

* * * * *

(b) Whenever the wage patterns in a particular area for a particular type of construction are well settled and whenever it may be reasonably anticipated that there will be a large volume of procurement in that area for such a type of construction, the Administrator, upon the request of a Federal agency or in his/her discretion, may furnish notice of a general wage determination in the **Federal Register** when, after consideration of the facts and circumstances involved, the Administrator finds that the applicable statutory standards and those of this part will be met. If there is a general wage determination applicable to the project, the agency may use it without notifying the Department of Labor, *provided,* that questions concerning its use shall be referred to the Department of Labor in accordance with § 1.6(b). General wage determinations are published in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". (See Appendix C for publication details and information on how to obtain general wage determinations.)

* * * * *

5. In section 1.6, paragraph (a)(2) is revised to read as follows:

§ 1.6 Use and effectiveness of wage determinations.

* * * * *

(a) * * *

(2) General wage determinations issued pursuant to § 1.5(b), notice of which is published in the **Federal Register**, shall contain no expiration date.

* * * * *

(6) In section 1.6, paragraph (c)(3) is revised to read as follows:

§ 1.6 Use and effectiveness of wage determinations.

* * * * *

(c) * * *

(3) All actions modifying a general wage determination shall be effective with respect to any project to which the determination applies, if notice of such actions is published before contract award (or the start of construction where there is no contract award), except as follows:

(i) In the case of contracts entered into pursuant to competitive bidding procedures, a modification, notice of which is published less than 10 days before the opening of bids, shall be effective unles the agency finds that there is not a reasonable time still available before bid opening to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator upon request. No such report shall be required if notice of the modification is published after bid opening.

(ii) In the case of projects assisted under the National Housing Act, a modification shall be effective if notice of such modification is published prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.

(iii) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, a modification shall be effective if notice of such modification is published prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is signed, whichever occurs first.

(iv) If under paragraph (c)(3)(i) of this section the contract has not been awarded within 90 days after bid opening, or if under paragraph (c)(3) (ii) or (iii) of this section construction has not begun within 90 days after initial endorsement or the signing of the agreement to enter into a housing assistance payments contract, any modification, notice of which is published in the **Federal Register** prior to award of the contract or the beginning of construction, as appropriate, shall be effective with respect to that contract unless the head of the agency or his or her designee requests and obtains an extension of the 90-day period from the Administrator. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all the circumstances.

(v) A modification to a general wage determination is "published" within the meaning of this section on the date of publication of notice of such modification in the **Federal Register**, or on the date the agency receives actual written notice of the modification from the Department of Labor, whichever occurs first.

(vi) A supersedeas wage determination or a modification to an applicable general wage determination, notice of which is published after contract award (or after the beginning of construction where there is no contract award) shall not be effective.

* * * * *

7. A new Appendix C is added following Appendix B, to read as follows:

* * * * *

Appendix C to Part 1

General Wage Determinations Issued Under The Davis-Bacon And Related Acts is published weekly by the Government Printing Office (GPO). This publication is available for examination at all 80 Regional Government Depository Libraries and many other of the 1,400 Government Depository Libraries across the country. Subscriptions may be obtained by contacting: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783-3238.

The publication is divided into three volumes—East, Central, and West—which may be ordered separately. The States covered by each volume are as follows: (Regional breakdowns of States are provided in Appendix B.)

Volume I—East

Alabama	North Carolina
Connecticut	Pennsylvania
Delaware	Rhode Island
Florida	South Carolina
Georgia	Tennessee
Kentucky	Vermont
Maine	Virginia
Maryland	West Virginia
Massachusetts	District of Col.
Mississippi	Canal Zone
New Hampshire	Puerto Rico
New Jersey	Virgin Islands
New York	

Volume II—Central

Arkansas	Missouri
Illinois	Nebraska
Indiana	New Mexico
Iowa	Ohio
Kansas	Oklahoma
Louisiana	Texas
Michigan	Wisconsin
Minnesota	

Volume III—West

Alaska	Nevada
Arizona	North Dakota
California	Oregon
Colorado	South Dakota
Hawaii	Utah
Idaho	Washington
Montana	Wyoming

On or about January 1 of each year, an annual edition will be issued that includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed providing any modifications or supersedeas wage determinations issued. Each volume's annual and weekly editions will be provided in loose-leaf format.

[FR Doc. 85-28849 Filed 12-3-85; 8:45 am]

BILLING CODE 4510-27-M

1985, in the first column on page 1844, the Effective Date now reading "January 29, 1985" should read "February 13, 1985."

BILLING CODE 1505-01-M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Office of the Secretary

29 CFR Part 1

Procedures for Predetermination of Wage Rates

AGENCY: Employment Standards Administration, Wage and Hour Division, Labor.

ACTION: Implementation of final rule.

SUMMARY: This document provides for the implementation of revised final Regulations, 29 CFR Part 1, which set forth the procedures for the predetermination of prevailing wage rates under the Davis-Bacon and Related Acts. These final regulations incorporate certain previously enjoined revisions which were upheld by the U.S. Court of Appeals for the District of Columbia Circuit. They may now be implemented since the injunction on these regulations has been lifted by the U.S. District Court for the District of Columbia.

EFFECTIVE DATE: January 31, 1985. See Supplementary Information below for dates of applicability.

FOR FURTHER INFORMATION CONTACT: William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone: 202-523-8305.

SUPPLEMENTARY INFORMATION: On April 29, 1983, a final rule was published in the **Federal Register** (48 FR 19532) which implemented those provisions of the final rule published in the **Federal Register** on May 28, 1982 (47 FR 23644) to the extent permitted by the terms of a permanent injunction issued by the U.S. District Court for the District of Columbia on December 23, 1982 (*Building and Construction Trades Department, AFL-CIO, et al.*, v. *Raymond J. Donovan, et al.*, 553 F. Supp. 352). The district court's decision, which was modified by its order of January 17, 1983, enjoined § 1.3(d) (exclusion of Davis-Bacon construction in wage determinations, § 1.7(b) (exclusion of metropolitan data in wage determinations for rural areas) and § 1.7(d) (helpers) of these regulations, as well as certain revisions to 29 CFR Part 3 and Part 5. The Department appealed this injunction and by separate notice in the **Federal Register** of April 29, 1983 (48 FR 19368) deferred the enjoined provisions until further notice pending the outcome of the appeal.

On July 5, 1983, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision largely upholding the Secretary's authority to implement the enjoined provisions. *Building and Construction Trades' Department AFL-CIO, et al.* v. *Raymond J. Donovan, Secretary of Labor, et al.*, 712 F. 2d 611. On October 28, 1983, the AFL-CIO filed a petition for a writ of certiorari in the U.S. Supreme Court for review of the appeals court decision. On January 16, 1984, the U.S. Supreme Court denied the petition, —— U.S. ——, 104 S. Ct. 975. On December 21, 1984, the U.S. District Court for the District of Columbia issued an order which, *inter alia*, lifts the injunction on §§ 1.3(d) and 1.7(b) of the regulations. The injunction remains in effect with regard to section 1.7(d) (helpers) and certain provisions in 29 CFR Parts 3 and 5.

The following is a description of the previously enjoined provisions which are now being adopted.

Section 1.3(d) Consideration of Davis-Bacon Rates in Wage Surveys.

This subsection provides that wages paid on projects subject to the Davis-Bacon Act will not be considered in developing wage determinations for "building" and "residential" construction projects unless the Department finds that there is not sufficient data from privately financed projects of a character similar to determine prevailing wages.

Section 1.7(b) Scope of Consideration.

This subsection is revised to prohibit the use of wage data from projects in metropolitan areas in making wage determinations in rural areas, and vice versa.

This document being published today is not a major rule since it is simply a republication and implementation of provisions previously published on which the court has lifted its injunction. A full Final Regulatory Impact and Regulatory Flexibility Analysis was prepared in connection with the May 28, 1982 publication of these regulations and a summary was published therein (47 FR 23648).

As stated above, this document is only a republication and implementation of regulations previously published for notice and comment. Accordingly, additional notice and comment is impracticable, unnecessary and contrary to the public interest. This finding is made pursuant to 5 U.S.C. 553(b)(3)(B). In addition, since these regulations were previously published in the **Federal Register**, a further delay in the effective date is not required by 5 U.S.C. 553(d) for these provisions.

Dates of Applicability

The provisions of these regulations shall be applicable only as to wage surveys completed on or after January 31, 1985.

This document was prepared under the direction and control of William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 1

Administrative practice and procedures, Government contracts, Labor, Minimum wages, Wages.

Accordingly, amendments to sections 1.3 and 1.7 of 29 CFR Part 1 as issued on May 28, 1982 are herein implemented as set forth below.

Signed at Washington, D.C., on this 29th day of January 1985.

Ford B. Ford,

Under Secretary of Labor.

Susan R. Meisinger,

Deputy Under Secretary for Employment Standards.

William M. Otter,

Administrator, Wage and Hour Division.

PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

29 CFR Part 1 is amended as follows:

1. The authority citation for Part 1 continues to read as follows:

Authority: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 29 U.S.C. 259; 40 U.S.C. 276a–276a–7; 40 U.S.C. 270c; and the laws listed in Appendix A of this Part.

2. Section 1.3 is amended by adding a new paragraph (d) to read as follows:

§ 1.3 Obtaining and compiling wage rate information.

* * * * *

(d) In compiling wage rate data for building and residential wage determinations, the Administrator will not use data from Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements unless it is determined that there is insufficient wage data to determine the prevailing wages in the absence of such data. Data

from Federal or federally assisted projects will be used in compiling wage rate data for heavy and highway wage determinations.

3. In § 1.7 paragraph (b) is revised to read as follows:

§ 1.7 Scope of consideration.

* * * * *

(b) If there has not been sufficient similar construction within the area in the past year to make a wage determination, wages paid on similar construction in surrounding counties may be considered, *provided* that projects in metropolitan counties may not be used as a source of data for a wage determination in a rural county, and projects in rural counties may not be used as a source of data for a wage determination for a metropolitan county.

* * * * *

[FR Doc. 85-2713 Filed 1-30-85; 8:45 am]
BILLING CODE 4510-27-M

PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

Sec.

1.1 Purpose and scope.
1.2 Definitions.
1.3 Obtaining and compiling wage rate information.
1.4 Outline of agency construction programs.
1.5 Procedure for requesting wage determinations.
1.6 Use and effectiveness of wage determinations.
1.7 Scope of consideration.
1.8 Reconsideration by the Administrator.
1.9 Review by Wage Appeals Board.
Appendix A
Appendix B

AUTHORITY: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 29 U.S.C. 259; 40 U.S.C. 276a—276a-7; 40 U.S.C. 276c; and the laws listed in Appendix A of this part.

SOURCE: 48 FR 19533, Apr. 29, 1983, unless otherwise noted.

§ 1.1 Purpose and scope.

(a) The procedural rules in this part apply under the Davis-Bacon Act (946 Stat. 1494, as amended; 40 U.S.C. 276a—276a-7) and other statutes listed in Appendix A to this part which provide for the payment of minimum wages, including fringe benefits, to laborers and mechanics engaged in construction activity under contracts entered into or financed by or with the assistance of agencies of the United States or the District of Columbia, based on determinations by the Secretary of Labor of the wage rates and fringe benefits prevailing for the corresponding classes of laborers and mechanics employed on projects similar to the contract work in the local areas where such work is to be performed. Functions of the Secretary of Labor under these statutes and under Reorganization Plan No. 14 of 1950 (64 Stat. 1267, 5 U.S.C. Appendix), except those assigned to the Wage Appeals Board (see 29 CFR Part 7), have been delegated to the Deputy Under Secretary of Labor for Employment Standards who in turn has delegated the functions to the Administrator of the Wage and Hour Division, and authorized representatives.

(b) The regulations in this part set forth the procedures for making and applying such determinations of prevailing wage rates and fringe benefits pursuant to the Davis-Bacon Act, each of the other statutes listed in Appendix A, and any other Federal statute providing for determinations of such wages by the Secretary of Labor in accordance with the provisions of the Davis-Bacon Act.

(c) Procedures set forth in this part are applicable, unless otherwise indicated, both to general wage determinations published in the FEDERAL REGISTER for contracts in specified localities, and to project wage determinations for use on contract work to be performed on a specific project.

§ 1.2 Definitions.[1]

(a)(1) The "prevailing wage" shall be the wage paid to the majority (more than 50 percent) of the laborers or mechanics in the classification on similar projects in the area during the period in question. If the same wage is not paid to a majority of those employed in the classification, the "prevailing wage" shall be the average of the wages paid, weighted by the total employed in the classification.

(2) In determining the "prevailing wages" at the time of issuance of a wage determination, the Administrator will be guided by paragraph (a)(1) of this section and will consider the types of information listed in § 1.3 of this part.

(b) The term "area" in determining wage rates under the Davis-Bacon Act and the prevailing wage provisions of the other statutes listed in Appendix A shall mean the city, town, village, county or other civil subdivision of the State in which the work is to be performed.

(c) The term "Administrator" shall mean the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative.

(d) The term "agency" shall mean the Federal agency, State highway department under 23 U.S.C. 113, or recipient State or local government under Title 1 of the State and Local Fiscal Assistance Act of 1972.

[48 FR 19533, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983]

§ 1.3 Obtaining and compiling wage rate information.

For the purpose of making wage determinations, the Administrator will conduct a continuing program for the obtaining and compiling of wage rate information.

(a) The Administrator will encourage the voluntary submission of wage rate data by contractors, contractors' associations, labor organizations, public officials and other interested parties, reflecting wage rates paid to laborers and mechanics on various types of construction in the area. The Administrator may also obtain data from agencies on wage rates paid on construction projects under their jurisdiction. The information submitted should reflect not only the wage rates paid a particular classification in an area, but also the type or types of construction on which such rate or rates are paid, and whether or not such rates were paid on Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements.

(b) The following types of information may be considered in making wage rate determinations:

(1) Statements showing wage rates paid on projects. Such statements should include the names and addresses of contractors, including subcontractors, the locations, approximate costs, dates of construction and types of projects, whether or not the projects are Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements, the number of workers employed in each classification on each project, and the respective wage rates paid such workers.

(2) Signed collective bargaining agreements. The Administrator may request the parties to an agreement to submit statements certifying to its scope and application.

(3) Wage rates determined for public construction by State and local officials pursuant to State and local prevailing wage legislation.

(4) In making wage rate determinations pursuant to 23 U.S.C. 113, the highway department of the State in which a project in the Federal-Aid highway system is to be performed shall be consulted. Before making a determination of wage rates for such a project the Administrator shall give due regard to the information thus obtained.

(5) Wage rate data submitted to the Department of Labor by contracting agencies pursuant to 29 CFR 5.5(a)(1)(ii).

(6) Any other information pertinent to the determination of prevailing wage rates.

(c) The Administrator may initially obtain or supplement such information obtained on a voluntary basis by such means, including the holding of hearings, and from any sources determined to be necessary. All information of the types described in § 1.3(b) of this part, pertinent to the determination of the wages prevailing at the time of issuance of the wage determination, will be evaluated in the light of § 1.2(a) of this part.

§ 1.4 Outline of agency construction programs.

To the extent practicable, at the beginning of each fiscal year each agency using wage determinations under any of the various statutes listed in Appendix A will furnish the Administrator with a general outline of its proposed construction programs for the coming year indicating the estimated number of projects for which wage determinations will be required, the anticipated types of construction, and the locations of construction. During the fiscal year, each agency will notify the Administrator of any significant changes in its proposed construction programs, as outlined at the beginning of the fiscal year. This report has been cleared in accordance with FPMR 101-11.11 and assigned interagency report control number 1671-DOL AN.

§ 1.5 Procedure for requesting wage determinations.

(a)(1) Except as provided in paragraph (b) of this section, the Federal

[1] These definitions are not intended to restrict the meaning of the terms as used in the applicable statutes.

agency shall initially request a wage determination under the Davis-Bacon Act or any of its related prevailing wage statutes by submitting Standard Form 308 to the Department of Labor at this address:

U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Branch of Construction Contract Wage Determination, Washington, D.C. 20210.

The agency shall check only those classifications on the applicable form which will be needed in the performance of the work. Inserting a note such as "entire schedule" or "all applicable classifications" is not sufficient. Additional classifications needed which are not on the form may be typed in the blank spaces or on a separate list and attached to the form.

(2) In completing SF-308, the agency shall furnish:

(i) A sufficiently detailed description of the work to indicate the type of construction involved. Additional description or separate attachment, if necessary for identification of type of project, shall be furnished.

(ii) The county (or other civil subdivision) and State in which the proposed project is located.

(3) Such request for a wage determination shall be accompanied by any pertinent wage payment information which may be available. When the requesting agency is a State highway department under the Federal-Aid Highway Acts as codified in 23 U.S.C. 113, such agency shall also include its recommendations as to the wages which are prevailing for each classification of laborers and mechanics on similar construction in the area.

(b) Whenever the wage patterns in a particular area for a particular type of construction are well settled and whenever it may be reasonably anticipated that there will be a large volume of procurement in that area for such a type of construction, the Administrator, upon the request of a Federal agency or in his/her discretion, may publish a general wage determination in the FEDERAL REGISTER when, after consideration of the facts and circumstances involved, the Administrator finds that the applicable statutory standards and those of this part will be met. If there is a general wage determination applicable to the project, the agency may use it without notifying the Department of Labor, *provided*, that questions concerning its use shall be referred to the Department of Labor in accordance with § 1.6(b).

(c) The time required for processing requests for wage determinations varies according to the facts and circumstances in each case. An agency should anticipate that such processing in the Department of Labor will take at least 30 days.

[48 FR 19533, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983]

§ 1.6 Use and effectiveness of wage determinations.

(a)(1) Project wage determinations initially issued shall be effective for 180 calendar days from the date of such determinations. If such a wage determination is not used in the period of its effectiveness it is void. Accordingly, if it appears that a wage determination may expire between bid opening and contract award (or between initial endorsement under the National Housing Act or the execution of an agreement to enter into a housing assistance payments contract under section 8 of the U.S. Housing Act of 1937, and the start of construction) the agency shall request a new wage determination sufficiently in advance of the bid opening to assure receipt prior thereto. However, when due to unavoidable circumstances a determination expires before award but after bid opening (or before the start of construction, but after initial endorsement under the National Housing Act, or before the start of construction but after the execution of an agreement to enter into a housing assistance payments contract under Section 8 of the U.S. Housing Act of 1937), the head of the agency or his or her designee may request the Administrator to extend the expiration date of the wage determination in the bid specifications instead of issuing a new wage determination. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension of the expiration date of the determination is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all of the circumstances, including an examination to determine if the previously issued rates remain prevailing. If the request for extension is denied, the Administrator will proceed to issue a new wage determination for the project.

(2) General wage determinations issued pursuant to § 1.5(b) and which are published in the FEDERAL REGISTER, shall contain no expiration date.

(b) Contracting agencies are responsible for insuring that only the appropriate wage determination(s) are incorporated in bid solicitations and contract specifications and for designating specifically the work to which such wage determinations will apply. Any question regarding application of wage rate schedules shall be referred to the Administrator, who shall give foremost consideration to area practice in resolving the question.

(c)(1) Project and general wage determinations may be modified from time to time to keep them current. A modification may specify only the items being changed, or may be in the form of a supersedeas wage determination, which replaces the entire wage determination. Such actions are distinguished from a determination by the Administrator under paragraphs (d), (e) and (f) of this section that an erroneous wage determination has been issued or that the wrong wage determination or wage rate schedule has been utilized by the agency.

(2)(i) All actions modifying a project wage determination received by the agency before contract award (or the start of construction where there is no contract award) shall be effective except as follows:

(A) In the case of contracts entered into pursuant to competitive bidding procedures, modifications received by the agency less than 10 days before the opening of bids shall be effective unless the agency finds that there is not a reasonable time still available before bid opening, to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator upon request. No such report shall be required if the modification is received after bid opening.

(B) In the case of projects assisted under the National Housing Act, modifications shall be effective if received prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.

(C) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, modifications shall be effective if received prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is executed, whichever occurs first.

(ii) Modifications to project wage determinations and supersedeas wage determinations shall not be effective after contract award (or after the beginning of construction where there is no contract award).

(iii) Actual written notice of a modification shall constitute receipt.

(3) All actions modifying a general wage determination shall be effective with respect to any project to which the determination applies, if published before contract award (or the start of construction where there is no contract award), except as follows:

(i) In the case of contracts entered into pursuant to competitive bidding procedures, modifications published less than 10 days before the opening of bids shall be effective unless the agency finds that there is not a reasonable time still available before bid opening to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator upon request. No such report shall be required if the modification is published after bid opening.

(ii) In the case of projects assisted

under the National Housing Act, modifications shall be effective if published prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.

(iii) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, modifications shall be effective if published prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is signed, whichever occurs first.

(iv) If under paragraph (c)(3)(i) of this section the contract has not been awarded within 90 days after bid opening, or if under paragraph (c)(3) (ii) or (iii) of this section construction has not begun within 90 days after initial endorsement or the signing of the agreement to enter into a housing assistance payments contract, any modifications published in the FEDERAL REGISTER prior to award of the contract or the beginning of construction, as appropriate, shall be effective with respect to that contract unless the head of the agency or his or her designee requests and obtains an extension of the 90-day period from the Administrator. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all the circumstances.

(v) A modification to a general wage determination is "published" within the meaning of this section on the date of publication in the FEDERAL REGISTER, or on the date the agency receives actual written notice of the modification from the Department of Labor, whichever occurs first.

(vi) Modifications or supersedeas wage determinations to an applicable general wage determination published after contract award (or after the beginning of construction where there is no contract award) shall not be effective.

(d) Upon his/her own initiative or at the request of an agency, the Administrator may correct any wage determination, without regard to paragraph (c) of this section, whenever the Administrator finds such a wage determination contains clerical errors. Such corrections shall be included in any bid specifications containing the wage determination, or in any on-going contract containing the wage determination in question, retroactively to the start of construction.

(e) Written notification by the Department of Labor prior to the award of a contract (or the start of construction under the National Housing Act, under section 8 of the U.S. Housing Act of 1937, or where there is no contract award) that (1) there is included in the bidding documents or solicitation the wrong wage determination or the wrong schedule or that (2) a wage determination is withdrawn by the Department of Labor as a result of a decision by the Wage Appeals Board, shall be effective immediately without regard to paragraph (c) of this section.

(f) The Administrator may issue a wage determination after contract award or after the beginning of construction if the agency has failed to incorporate a wage determination in a contract required to contain prevailing wage rates determined in accordance with the Davis-Bacon Act, or has used a wage determination which by its terms or the provisions of this part clearly does not apply to the contract. Further, the Administrator may issue a wage determination which shall be applicable to a contract after contract award or after the beginning of construction when it is found that the wrong wage determination has been incorporated in the contract because of an inaccurate description of the project or its location in the agency's request for the wage determination. Under any of the above circumstances, the agency shall either terminate and resolicit the contract with the valid wage determination, or incorporate the valid wage determination retroactive to the beginning of construction through supplemental agreement or through change order, *provided* that the contractor is compensated for any increases in wages resulting from such change. The method of incorporation of the valid wage determination, and adjustment in contract price, where appropriate, should be in accordance with applicable procurement law.

(g) If Federal funding or assistance under a statute requiring payment of wages determined in accordance with the Davis-Bacon Act is not approved prior to contract award (or the beginning of construction where there is no contract award), the agency shall request a wage determination prior to approval of such funds. Such a wage determination shall be issued based upon the wages and fringe benefits found to be prevailing on the date of award or the beginning of construction (under the National Housing Act, under section 8 of the U.S. Housing Act of 1937 or where there is no contract award), as appropriate, and shall be incorporated in the contract specifications retroactively to that date, *provided,* that upon the request of the head of the agency in individual cases the Administrator may issue such a wage determination to be effective on the date of approval of Federal funds or assistance whenever the Administrator finds that it is necessary and proper in the public interest to prevent injustice or undue hardship, *provided further* that the Administrator finds no evidence of intent to apply for Federal funding or assistance prior to contract award or the start of construction, as appropriate.

§ 1.7 Scope of consideration.

(a) In making a wage determination, the "area" will normally be the county unless sufficient current wage data (data on wages paid on current projects or, where necessary, projects under construction no more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate) is unavailable to make a wage determination.

(b) If there has not been sufficient similar construction within the area in the past year to make a wage determination, wages paid on similar construction in surrounding counties may be considered.

(c) If there has not been sufficient similar construction in surrounding counties or in the State in the past year, wages paid on projects completed more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate, may be considered.

§ 1.8 Reconsideration by the Administrator.

Any interested person may seek reconsideration of a wage determination issued under this part or of a decision of the Administrator regarding application of a wage determination. Such a request for reconsideration shall be in writing accompanied by a full statement of the interested person's views and any supporting wage data or other pertinent information. The Administrator will respond within 30 days of receipt thereof, or will notify the requestor within the 30 day period that additional time is necessary.

§ 1.9 Review by Wage Appeals Board.

Any interested person may appeal to the Wage Appeals Board for a review of a wage determination or its application made under this part, after reconsideration by the Administrator has been sought pursuant to § 1.8 and denied. Any such appeal may, in the discretion of the Wage Appeals Board, be received, accepted, and decided in accordance with the provisions of 29 CFR Part 7 and such other procedures as the Board may establish.

APPENDIX A

Statutes Related to the Davis-Bacon Act Requiring Payment of Wages at Rates Predetermined by the Secretary of Labor

1. The Davis-Bacon Act (secs. 1-7, 46 Stat. 1494, as amended; Pub. L. 74-403, 40 U.S.C. 276a-276a-7).

2. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).

3. Housing Act of 1950 (college Housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).

4. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86-372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).

5. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).

6. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).

7. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).

8. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).

9. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91-230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92-318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.

10. The Federal-Aid Highway Acts (72 Stat. 895, as amended by 82 Stat. 821; 23 U.S.C. 113, as amended by the Surface Transportation Assistance Act of 1982, Pub. L. 97-424).

11. Indians Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).

12. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).

13. Rehabilitation Act of 1973 (sec. 306(b)(5), 87 Stat. 384, 29 U.S.C. 776(b)(5)).

14. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 83 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).

15. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).

16. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).

17. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).

18. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).

19. National Visitors Center Facilities Act of 1968 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).

20. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).

21. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 306(h)(2) thereof, 83 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).

22. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).

23. Health Professions Education Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2256; 42 U.S.C. 293a(c)(7)).

24. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 364; 42 U.S.C. 296a(b)(5)).

25. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928, 42 U.S.C. 299d(b)(4)).

26. Safe Drinking Water Act (sec. 2(a), see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j-9(e)).

27. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o-3(b)(1)(H)).

28. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).

29. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).

30. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).

31. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).

32. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c-3).

33. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).

34. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).

35. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

36. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

37. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

38. Older Americans Act of 1965 (sec. 502, Pub. L. 89-73, as amended by sec. 501, Pub. L. 93-29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).

39. Public Works and Economic Development Act of 1965 (sec. 712, 79 Stat. 575 as amended; 42 U.S.C. 3222).

40. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).

41. New Communities Act of 1968 (sec. 410.82 Stat. 516; 42 U.S.C. 3909).

42. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).

43. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

44. Housing and Community Development Act of 1974 (secs. 110, 802(g), 83 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

45. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).

46. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).

47. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

48. Energy Conservation and Production Act (sec. 45(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).

49. Solid Waste Disposal Act (sec. 2, 90 Stat. 2828; 42 U.S.C. 6979).

50. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

51. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

52. Highway speed ground transportation study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

53. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

54. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281(i)).

55. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat; 40 U.S.C. 682(b)(4)).

NOTE:Repealed Dec. 9, 1969 and labor standards incorporated in sec. 1-1431 of the District of Columbia Code.

56. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89-694, but not in the United States Code).

57. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87-328) (considered a statute for purposes of this part but not in the United States Code).

58. Energy Security Act (Sec. 175(c), Pub. L. 96-294, 94 Stat. 611; 42 U.S.C. 8701 note).

[48 FR 19533, Apr. 29, 1983; 48 FR 20408, May 6, 1983

APPENDIX B

Boston Region

For the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, JFK Federal Building, Government Center, Room 1612C, Boston, Massachusetts 02203 (telephone: 617-223-5565).

New York Region

For the States of New Jersey and New York and for the Canal Zone, Puerto Rico, and the Virgin Islands:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 1515 Broadway, Room 3300, New York, New York 10036 (telephone: 212-399-5443).

Philadelphia Region

For the States of Delaware, Maryland, Pennsylvania, Virginia, and West Virginia, and the District of Columbia:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Gateway Building, Room 15220, 3535 Market Street, Philadelphia, Pennsylvania 19104 (telephone: 215-596-1193).

Atlanta Region

For the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 1371 Peachtree Street, N.E., Room 305, Atlanta, Georgia 30309 (telephone: 404-881-4801).

Chicago Region

For the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 230 South Dearborn Street, 8th Floor, Chicago, Illinois 60604 (telephone: 312-353-7249).

Dallas Region

For the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 555 Griffin Square Building, Young and Griffin Streets, Dallas, Texas 75202 (telephone: 214-767-6891).

Kansas City Region

For the States of Iowa, Kansas, Missouri, and Nebraska:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 2000, 911 Walnut Street, Kansas City, Missouri 64106 (telephone: 816-374-5386).

Denver Region

For the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 1440, 1961 Stout Street, Denver, Colorado 80294 (telephone: 304-837-4613).

San Francisco Region

For the States of Arizona, California, Hawaii, and Nevada:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 450 Golden Gate Avenue, Room 10353, San Francisco, California 94102 (telephone: 415-556-3592).

Seattle Region

For the States of Alaska, Idaho, Oregon, and Washington:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, Room 4141, 909 First Avenue, Seattle, Washington 98174 (telephone: 206-442-1916).

GPO 913-233

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Office of the Secretary

29 CFR Part 5

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Implementation of final rule.

SUMMARY: This document provides for implementation of regulations, 29 CFR Part 5, Subpart A, previously published in the **Federal Register** on May 28, 1982 (47 FR 23658), on labor standards applicable to contracts for federally financed and assisted construction subject to the Davis-Bacon and Related Acts and contracts subject to the Contract Work Hours and Safety Standards Act (CWHSSA), to the extent that its implementation is permitted by the permanent injunction issued by the U.S. District Court for the District of Columbia on December 23, 1982. The enjoined provisions of the May 1982 final rule continue to be deferred.

DATES: Effective date: June 28, 1983. See **SUPPLEMENTARY INFORMATION** below for dates of applicability.

FOR FURTHER INFORMATION CONTACT: William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone: 202-523-8305.

SUPPLEMENTARY INFORMATION: On August 14, 1981, a proposal was published in the **Federal Register** (46 FR 41456) to make revisions to Subpart A of Regulations, 29 CFR Part 5, Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act), allowing 60 days for public comment.

On May 28, 1982, the regulation was published in the **Federal Register** (47 FR 23658) as a final rule with a scheduled effective date of July 27, 1982. However, on June 11, 1982, a suit was filed against the Department of Labor in U.S. District Court for the District of Columbia seeking to prevent the implementation of the revised regulations. On July 22, 1982, the Court issued a preliminary injunction enjoining the Department from implementing certain provisions of the revised regulations pending final disposition of the suit *(Building and Construction Trades Department, AFL-CIO, et al.,* v. *Raymond J. Donovan, et al.,* 543 F. Supp. 1282). The Department published a notice in the **Federal Register** on July 26, 1982 (47 FR 32070), deferring the implementation of this regulation in its entirety until further notice.

On December 23, 1982, the Court issued a permanent injunction which, as modified by its order of January 17, 1983, enjoined §§ 5.2(n)(4) (helpers), 5.5(a)(1)(ii)(A) (helpers), 5.5(a)(4)(iv) (helpers), 5.5(a)(3)(ii) (Copeland Act requirements), and 5.6(a) (2) and (3) (Copeland Act requirements) of this regulation. The Department has appealed this ruling.

The document published today implements those provisions of the final rule published in the **Federal Register** on May 28, 1982 (47 FR 23656) which have not been enjoined by the court. The effective date of the enjoined provisions is deferred, by separate notice in today's **Federal Register**, pending final determination of the validity of those provisions. If the Department prevails on appeal, the deferred provisions (§§ 5.2(n)(4), 5.5(a)(1)(ii)(A), 5.5(a)(3) (ii) and (iii), 5.5(a)(4)(iv), and 5.6(a) (2) and (3)) will then be implemented.

As described more fully below, the court order necessitated corresponding deletions of sections or portions of sections in the text of the regulations now being implemented; in addition, since the court enjoined the new rule's elimination of the requirement for weekly submission of certified payrolls, that requirement from § 5.5(a)(3)(ii) of the previous regulations is incorporated in the text. To avoid confusion, the text of the entire rule as implemented at this time is set forth herein.

The following is a description of the changes made to the May 28, 1982 regulations in order to comport with the Court's decision and order, pending final disposition of the appeal.

Sections 5.2(n)(4) and 5.5(a)(4)(iv)—Helpers.

The enjoined definition of "helper" in § 5.2(n)(4), as well as the conditions governing the use of helpers contained in enjoined § 5.5(a)(4)(iv), are deleted from the text.

Section 5.5(a)(1)(ii)(A)—Conformance Procedures.

This section as enjoined provided that helper rates could be conformed without regard to the requirement applicable to all other conformance actions that the work to be performed by the conformed class is not work performed by a class already listed in the wage determination. The separate treatment of helpers in the conformance of wage rates has been deleted from the text.

Sections 5.5(a)(3) (ii) and (iii) and 5.6(a) (2) and (3)—Submission of Wage Payment Information.

These sections would have eliminated the requirement that contractors submit weekly a copy of payrolls and instead would have required only a weekly submission certifying compliance with the Davis-Bacon and Copeland Acts. The regulations would have required contractors to submit payrolls upon request of contracting agencies or the Department of Labor, but such requests would be made only in conjunction with specific compliance checks or enforcement actions. Because of the injunction, the weekly payroll submission requirement in the previous regulation has been added to the text, with language clarifying that copies of regular payrolls containing all of the required information (in any form desired by the contractor) are sufficient to satisfy the requirements. Furthermore, Optional Form WH-347 is available for the purpose of reporting payroll information if the contractor so chooses, but it is not mandatory that this form be used.

In addition to the textual changes described above, the following necessary changes have been made.

The definition of "construction" in § 5.2(j) is amended to delete the reference to "initial construction" contained in section 113 of Title 23, U.S.C., in order to comport with a legislative amendment effective on January 6, 1983, as part of the Surface Transportation Assistance Act of 1982, Pub. L. 97-424. (See also § 5.1(a) 12.)

An editorial change is made in the text of the conformance procedures contained in § 5.5(a)(1)(ii) (B) and (C) to clarify that the contracting officer must concur with a proposed classification and wage rate conformance action before submitting the matter to DOL for review or else it will be considered a dispute to be resolved by DOL, and to provide further that the contracting officer will be notified of the Wage and Hour Administrator's decision on all proposed conformance actions.

Section 5.15 is amended to include in paragraph (d)(4) the variation from the overtime requirements of the Contract Work Hours and Safety Standards Act for pilots and copilots of fixed-wing and rotary-wing aircraft employed on contracts for fire fighting or suppression

and related services, which was published as a final rule in the **Federal Register** of July 2, 1982 (47 FR 28916).

Minor editorial changes and necessary typographical corrections have also been made in the following sections: Table of Contents at § 5.11; §§ 5.1(a); 5.2(h); 5.2(j); 5.2(n); 5.5(a)(4); 5.7(d); 5.8(b); 5.11; and 5.12(d)(4).

The document being published today is not a major rule since it is simply a republication and implementation of provisions previously published. A full Final Regulatory Impact and Regulatory Flexibility Analysis was prepared in connection with the May 28, 1982 publication of the regulations and a summary was published therein. See 47 FR 23661. Because of the Court injunction, the alternatives selected cannot be fully implemented at this time.

As discussed above, this document is only a republication and implementation of regulations previously published for notice and comment to the extent implementation is permitted by the court's injunction. Other changes are only editorial in nature. Accordingly, additional notice and comment is impracticable, unnecessary and contrary to the public interest.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the reporting and recordkeeping provisions included in this rule were submitted for approval to the Office of Management and Budget (OMB). Subsequent to the May 28 publication of this rule, the information collection requirements contained in this regulation (see §§ 5.5(a)(1)(ii), 5.5(a)(1)(iv), 5.5(a)(3)(i), 5.5(a)(3)(ii), 5.5(c), 5.15(d)(1), 5.15(d)(3), and 5.15(d)(4)) were approved by OMB under the provisions of 44 U.S.C. 3507 and have been assigned OMB Control Numbers 1215–0140, 1215–0149 and 1215–0017.

Dates of Applicability

The provisions of §§ 5.2 and 5.5 of this part shall be applicable only as to contracts entered into pursuant to invitations for bids issued or negotiations concluded on or after June 28, 1983.

This document was prepared under the direction and control of William M. Otter, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 5

Administrative practice and procedure, Government contracts, Investigations, Labor, Minimum wages, Penalties, Recordkeeping requirements, Reporting requirements, Wages.

Accordingly, 29 CFR Part 5, Subpart A, as issued on May 28, 1982 with the necessary textual changes discussed above is herein implemented, as fully set forth below.

Signed at Washington, D.C., on this 22d day of April 1983.

Raymond J. Donovan,

Secretary of Labor.

Robert B. Collyer,

Deputy Under Secretary for Employment Standards.

William M. Otter,

Administrator, Wage and Hour Division.

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

Subpart A—Davis-Bacon and Related Acts Provisions and Procedures

Sec.

5.1 Purpose and scope.
5.2 Definitions.
5.3—5.4 [Reserved]
5.5 Contract provisions and related matters.
5.6 Enforcement.
5.7 Reports to the Secretary of Labor.
5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.
5.9 Suspension of funds.
5.10 Restitution, criminal action.
5.11 Disputes concerning payment of wages.
5.12 Debarment proceedings.
5.13 Rulings and interpretations.
5.14 Variations, tolerances, and exemptions from Parts 1 and 3 of this subtitle and this part.
5.15 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.
5.16 Training plans approved or recognized by the Department of Labor prior to August 20, 1975.
5.17 Withdrawal of approval of a training program.

Subpart B—Interpretation of the Fringe Benefits Provisions of the Davis-Bacon Act

5.20 Scope and significance of this subpart.
5.21 [Reserved]
5.22 Effect of the Davis-Bacon fringe benefits provisions.
5.23 The statutory provisions.
5.24 The basic hourly rate of pay.
5.25 Rate of contribution or cost for fringe benefits.
5.26 "* * * contribution irrevocably made * * * to a trustee or to a third person".
5.27 "* * * fund, plan, or program."
5.28 Unfunded plans.
5.29 Specific fringe benefits.
5.30 Types of wage determinations.
5.31 Meeting wage determination obligations.
5.32 Overtime payments.

AUTHORITY: Reorg. Plan No. 14 of 1950, 64 STat. 1267; sec. 2, 48 Stat. 948; sec. 10, 61 Stat. 89; 5 U.S.C. 301, 133z-15 note, 29 U.S.C. 258; 40 U.S.C. 276c, unless otherwise noted.

SOURCE: 48 FR 19541, Apr. 29, 1983, unless otherwise noted.

Subpart A—Davis-Bacon and Related Acts Provisions and Procedures

AUTHORITY: 40 U.S.C. 276a-276a-7; 40 U.S.C. 276c; 40 U.S.C. 327-332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; and the statutes listed in section 5.1(a) of this part.

SOURCE: 48 FR 19540, Apr. 29, 1983, unless otherwise noted.

§ 5.1 Purpose and scope.

(a) The regulations contained in this part are promulgated under the authority conferred upon the Secretary of Labor by Reorganization Plan No. 14 of 1950 and the Copeland Act in order to coordinate the administration and enforcement of the labor standards provisions of each of the following acts by the Federal agencies responsible for their administration and of such additional statutes as may from time to time confer upon the Secretary of Labor additional duties and responsibilities similar to those conferred upon the Secretary of Labor under Reorganization Plan No. 14 of 1950:

1. The Davis-Bacon Act (sec. 1-7, 46 Stat. 1949, as amended; Pub. L. 74-403, 40 U.S.C. 276a-276a-7).

2. Copeland Act (40 U.S.C. 276c).

3. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332).

4. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).

5. Housing Act of 1950 (college housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).

6. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86-372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).

7. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).

8. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).

9. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).

10. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).

11. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91-230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92-318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.

12. The Federal-Aid Highway Acts (72 Stat. 895, as amended by 82 Stat. 821; 23 U.S.C. 113, as amended by the Surface Transportation Assistance Act of 1982, Pub. L. 97-424).

13. Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).

14. Indian Health Care Improvement Act

(sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).

15. Rehabilitation Act of 1973 (sec. 306(b)(5) 87 Stat. 384, 29 U.S.C. 776(b)(5)).

16. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 88 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).

17. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).

18. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).

19. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).

20. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).

21. National Visitors Center Facilities Act of 1968 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).

22. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).

23. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 308(h)(2) thereof, 88 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).

24. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).

25. Health Professions Educational Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2258, 42 U.S.C. 293a(c)(7)).

26. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 384; 42 U.S.C. 296a(b)(5)).

27. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).

28. Safe Drinking Water Act (sec. 2(a) see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j-9(e)).

29. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o-3(b)(1)(H)).

30. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).

31. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).

32. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).

33. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).

34. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c-3).

35. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).

36. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).

37. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

38. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

39. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

40. Older Americans Act of 1965 (sec. 502, Pub. L. 89-73, as amended by sec. 501, Pub. L. 93-29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).

41. Public Works and Economic Development Act of 1965 (sec. 712; 79 Stat. 575 as amended; 42 U.S.C. 3222).

42. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).

43. New Communities Act of 1968 (sec. 410, 82 Stat. 516; 42 U.S.C. 3909).

44. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).

45. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

46. Housing and Community Development Act of 1974 (secs. 110, 802(g), 88 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

47. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).

48. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).

49. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

50. Energy Conservation and Production Act (sec. 451(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).

51. Solid Waste Disposal Act (sec. 2, 90 Stat. 2823; 42 U.S.C. 6979).

52. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

53. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

54. Highway Speed Ground Transportation Study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

55. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

56. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281i).

57. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat. 644; 40 U.S.C. 682(b)(4). NOTE.—Repealed December 9, 1969, and labor standards incorporated in sec. 1-1431 of the District of Columbia Code).

58. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89-694, but not in the United States Code).

59. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87-328) (considered a statute for purposes of the plan but not in the United States Code).

60. Energy Security Act (sec. 175(c), Pub. L. 96-294, 94 Stat. 611; 42 U.S.C. 8701 note).

(b) Part 1 of this subtitle contains the Department's procedural rules governing requests for wage determinations and the issuance and use of such wage determinations under the Davis-Bacon Act and its related statutes as listed in that part.

§ 5.2 Definitions.

(a) The term "Secretary" includes the Secretary of Labor, the Deputy Under Secretary for Employment Standards, and their authorized representatives.

(b) The term "Administrator" means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative.

(c) The term "Federal agency" means the agency or instrumentality of the United States which enters into the contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to the project subject to a statute listed in § 5.1.

(d) The term "Agency Head" means the principal official of the Federal agency and includes those persons duly authorized to act in the behalf of the Agency Head.

(e) The term "Contracting Officer" means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency.

(f) The term "labor standards" as used in this part means the requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act (other than those relating to safety and health), the Copeland Act, and the prevailing wage provisions of the other statutes listed in § 5.1, and the regulations in Parts 1 and 3 of this subtitle and this part.

(g) The term "United States or the District of Columbia" means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including nonappropriated fund instrumentalities.

(h) The term "contract" means any prime contract which is subject wholly or in part to the labor standards provisions of any of the acts listed in § 5.1 and any subcontract of any tier thereunder, let under the prime contract. A State or local Government is not regarded as a contractor under statutes providing loans, grants, or other Federal assistance in situations where construction is performed by its own employees. However, under statutes requiring payment of prevailing wages to all laborers and mechanics employed on the assisted project, such as the U.S. Housing Act of 1937, State and local recipients of Federal-aid must pay these employees according to Davis-Bacon labor standards.

(i) The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles,

supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a "building" or "work" within the meaning of the regulations in this part unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

(j) The terms "construction", "prosecution", "completion", or "repair" mean all types of work done on a particular building or work at the site thereof (or, under the United States Housing Act of 1937 and the Housing Act of 1949), all work done in the construction or development of the project, including without limitation, altering, remodeling, installation (where appropriate) on the site of the work of items fabricated off-site, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work (or, under the United States Housing Act of 1937 and the Housing Act of 1949, in the construction or development of the project), by persons employed by the contractor or subcontractor.

(k) The term "public building" or "public work" includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(l) The term "site of the work" is defined as follows:

(1) The "site of the work" is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed and, as discussed in paragraph (l)(2) of this section, other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the "site".

(2) Except as provided in paragraph (l)(3) of this section, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., are part of the "site of the work" provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them.

(3) Not included in the "site of the work" are permanent home offices, branch plant establishments, fabrication plants, and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial supplier or materialman which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the "site of the work". Such permanent, previously established facilities are not a part of the "site of the work", even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

(m) The term "laborer" or "mechanic" includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term "laborer" or "mechanic" includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in Part 541 of this title are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of Part 541, are laborers and mechanics for the time so spent.

(n) The terms apprentice and trainee are defined as follows:

(1) "Apprentice" means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice;

(2) "Trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

(3) These provisions do not apply to "apprentices" and "trainees" employed on projects subject to 23 U.S.C. 113 who are enrolled in programs which have been certified by the Secretary of Transportation in accordance with 23 U.S.C. 113(c).

(o) Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the United States is "employed" regardless of any contractual relationship alleged to exist between the contractor and such person.

(p) The term "wages" means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan of program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

(q) The term "wage determination" includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination shall be in accordance with the provisions of § 1.6 of this title.

[48 FR 19541, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983]

§§ 5.3–5.4 [Reserved]

§ 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of

the acts listed in §5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(*1*) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(*2*) The classification is utilized in the area by the construction industry; and

(*3*) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(2) *Withholding.* The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Sec-

retary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB control numbers 1215-0140 and 1215-0017.)

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate Federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under § 5.5(a)(3)(i) of Regulations, 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402.The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB control number 1215-0149.)

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(*1*) That the payroll for the payroll period contains the information required to be maintained under § 5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete;

(*2*) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(*3*) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices and Trainees*—(i) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprentice-

ship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination; debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of Eligibility.* (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) *Contract Work Hours and Safety Standards Act.* The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or § 4.6 of Part 4 of this title. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $10 for each calendar day or which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job. (Approved by the Office of Management and Budget

under OMB control numbers 1215-0140 and 1215-0017.)

§ 5.6 Enforcement.

(a)(1) It shall be the responsibility of the Federal agency to ascertain whether the clauses required by § 5.5 have been inserted in the contracts subject to the labor standards provisions of the Acts contained in § 5.1. Agencies which do not directly enter into such contracts shall promulgate the necessary regulations or procedures to require the recipient of the Federal assistance to insert in its contracts the provisions of § 5.5. No payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency unless the agency insures that the clauses required by § 5.5 and the appropriate wage determination of the Secretary of Labor are contained in such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency after the beginning of construction unless there is on file with the agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of § 5.5 or unless there is on file with the agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

(2) Payrolls and Statements of Compliance submitted pursuant to § 5.5(a)(3)(ii) shall be preserved by the Federal agency for a period of 3 years from the date of completion of the contract and shall be produced at the request of the Department of Labor at any time during the 3-year period.

(3) The Federal agency shall cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by § 5.5 and the applicable statutes listed in § 5.1. Investigations shall be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations shall include interviews with employees, which shall be taken in confidence, and examinations of payroll data and evidence of registration and certification with respect to apprenticeship and training plans. In making such examinations, particular care shall be taken to determine the correctness of classifications and to determine whether there is a disproportionate employment of laborers and of apprentices or trainees registered in approved programs. Such investigations shall also include evidence of fringe benefit plans and payments thereunder. Complaints of alleged violations shall be given priority.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages and liquidated damages and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(5) It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of an employee who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the employee's identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the employee.
Disclosure of employee statements shall be governed by the provisions of the "Freedom of Information Act" (5 U.S.C. 552, see 29 CFR Part 70) and the "Privacy Act of 1974" (5 U.S.C. 552a).

(b) The Administrator shall cause to be made such investigations as deemed necessary, in order to obtain compliance with the labor standards provisions of the applicable statutes listed in § 5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes listed in § 5.1. Federal agencies, contractors, subcontractors, sponsors, applicants, or owners shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations. The findings of such an investigation, including amounts found due, may not be altered or reduced without the approval of the Department of Labor. Where the underpayments disclosed by such an investigation total $1,000 or more, where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), or where liquidated damages may be assessed under the Contract Work Hours and Safety Standards Act, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation and any action taken by the contractor to correct the violative practices, including any payment of back wages. In other circumstances, the Federal agency will be furnished a letter of notification summarizing the findings of the investigation.

§ 5.7 Reports to the Secretary of Labor.

(a) *Enforcement reports.* (1) Where underpayments by a contractor or subcontractor total less than $1,000, and where there is no reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act that the contractor has disregarded its obligations to employees and subcontractors), and where restitution has been effected and future compliance assured, the Federal agency need not submit its investigative findings and recommendations to the Administrator, unless the investigation was made at the request of the Department of Labor. In the latter case, the Federal agency shall submit a factual summary report detailing any violations including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed under the Contract Work Hours and Safety Standards Act, corrective measures taken (such as "letters of notice"), and any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages under § 5.8.

(2) Where underpayments by a contractor or subcontractor total $1,000 or more, or where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), the Federal agency shall furnish within 60 days after completion of its investigation, a detailed enforcement report to the Administrator.

(b) *Semi-annual enforcement reports.* To assist the Secretary in fulfilling the responsibilities under Reorganization Plan No. 14 of 1950, Federal agencies shall furnish to the Administrator by April 30 and October 31 of each calendar year semi-annual reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and its related acts covering the periods of October 1 through March 31 and April 1 through September 30, respectively. Such reports shall be prepared in the manner prescribed in memoranda issued to Federal agencies by the Administrator. This report has been cleared in accordance with FPMR 101-11.11 and assigned interagency report control number 1482-DOL-SA.

(c) *Additional information.* Upon request, the Agency Head shall transmit to the Administrator such information available to the Agency with respect to contractors and subcontractors, their contracts, and the nature of the contract work as the Administrator may find necessary for the performance of his or her duties with respect to the labor standards provisions referred to in this part.

(d) *Contract termination.* Where a contract is terminated by reason of violations of the labor standards provisions of the statutes listed in § 5.1, a report shall be submitted promptly to the Administrator and to the Comptroller General (if the contract is subject to the Davis-Bacon Act), giving the name and address of the contrac-

tor or subcontractor whose right to proceed has been terminated, and the name and address of the contractor or subcontractor, if any, who is to complete the work, the amount and number of the contract, and the description of the work to be performed.

§ 5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.

(a) The Contract Work Hours and Safety Standards Act requires that laborers or mechanics shall be paid wages at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or forty hours in any workweek. In the event of violation of this provision, the contractor and any subcontractor shall be liable for the unpaid wages and in addition for liquidated damages, computed with respect to each laborer or mechanic employed in violation of the Act in the amount of $10 for each calendar day or workweek in which such individual was required or permitted to work without payment of required overtime wages. Any contractor or subcontractor aggrieved by the withholding of liquidated damages shall have the right to appeal to the head of the agency of the United States (or the territory or District of Columbia, as appropriate) for which the contract work was performed or for which financial assistance was provided.

(b) *Findings and recommendations of the Agency Head.* The Agency Head has the authority to review the administrative determination of liquidated damages and to issue a final order affirming the determination. It is not necessary to seek the concurrence of the Administrator but the Administrator shall be advised of the action taken. Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, and the amount of the liquidated damages computed for the contract is in excess of $500, the Agency Head may make recommendations to the Secretary that an appropriate adjustment in liquidated damages be made or that the contractor or subcontractor be relieved of liability for such liquidated damages. Such findings with respect to liquidated damages shall include findings with respect to any wage underpayments for which the liquidated damages are determined.

(c) The recommendations of the Agency Head for adjustment or relief from liquidated damages under paragraph (a) of this section shall be reviewed by the Administrator or an authorized representative who shall issue an order concurring in the recommendations, partially concurring in the recommendations, or rejecting the recommendations, and the reasons therefor. The order shall be the final decision of the Department of Labor, unless a petition for review is filed pursuant to Part 7 of this title, and the Wage Appeals Board in its discretion reviews such decision and order; or, with respect to contracts subject to the Service Contract Act, unless petition for review is filed pursuant to Part 8 of this title, and the Board of Service Contract Appeals in its discretion reviews such decision and order.

(d) Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours and Safety Standards Act for a contract is $500 or less and the Agency Head finds that the sum of liquidated damages is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours and Safety Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, an appropriate adjustment may be made in such liquidated damages or the contractor or subcontractor may be relieved of liability for such liquidated damages without submitting recommendations to this effect or a report to the Department of Labor. This delegation of authority is made under section 105 of the Contract Work Hours and Safety Standards Act and has been found to be necessary and proper in the public interest to prevent undue hardship and to avoid serious impairment of the conduct of Government business.

§ 5.9 Suspension of funds.

In the event of failure or refusal of the contractor or any subcontractor to comply with the labor standards clauses contained in § 5.5 and the applicable statutes listed in § 5.1, the Federal agency, upon its own action or upon written request of an authorized representative of the Department of Labor, shall take such action as may be necessary to cause the suspension of the payment, advance or guarantee of funds until such time as the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

§ 5.10 Restitution, criminal action.

(a) In cases other than those forwarded to the Attorney General of the United States under paragraph (b), of this section, where violations of the labor standards clauses contained in § 5.5 and the applicable statutes listed in § 5.1 result in underpayment of wages to employees, the Federal agency or an authorized representative of the Department of Labor shall request that restitution be made to such employees or on their behalf to plans, funds, or programs for any type of bona fide fringe benefits within the meaning of section 1(b)(2) of the Davis-Bacon Act.

(b) In cases where the Agency Head or the Administrator finds substantial evidence that such violations are willful and in violation of a criminal statute, the matter shall be forwarded to the Attorney General of the United States for prosecution if the facts warrant. In all such cases the Administrator shall be informed simultaneously of the action taken.

§ 5.11 Disputes concerning payment of wages.

(a) This section sets forth the procedure for resolution of disputes of fact or law concerning payment of prevailing wage rates, overtime pay, or proper classification. The procedures in this section may be initiated upon the Administrator's own motion, upon referral of the dispute by a Federal agency pursuant to § 5.5(a)(9), or upon request of the contractor or subcontractor(s).

(b)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings. If the Administrator determines that there is reasonable cause to believe that the contractor and/or subcontractor(s) should also be subject to debarment under the Davis-Bacon Act or § 5.12(a)(1), the letter will so indicate.

(2) A contractor and/or subcontractor desiring a hearing concerning the Administrator's investigative findings shall request such a hearing by letter postmarked within 30 days of the date of the Administrator's letter. The request shall set forth those findings which are in dispute and the reasons therefor, including any affirmative defenses, with respect to the violations and/or debarment, as appropriate.

(3) Upon receipt of a timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearing shall be conducted in accordance with the procedures set forth in 29 CFR Part 6.

(c)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceedings under § 5.12, the Administrator shall notify the contractor and subcontractor(s) (if any), by registered

or certified mail to the last known address, of the investigation findings, and shall issue a ruling on any issues of law known to be in dispute.

(2)(i) If the contractor and/or subcontractor(s) disagree with the factual findings of the Administrator or believe that there are relevant facts in dispute, the contractor or subcontractor(s) shall so advise the Administrator by letter postmarked within 30 days of the date of the Administrator's letter. In the response, the contractor and/or subcontractor(s) shall explain in detail the facts alleged to be in dispute and attach any supporting documentation.

(ii) Upon receipt of a response under paragraph (c)(2)(i) of this section alleging the existence of a factual dispute, the Administrator shall examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator shall refer the case to the Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator shall so rule and advise the contractor and subcontractor(s) (if any) accordingly.

(3) If the contractor and/or subcontractor(s) desire review of the ruling issued by the Administrator under paragraph (c)(1) or (2) of this section, the contractor and/or subcontractor(s) shall file a petition for review thereof with the Wage Appeals Board within 30 days of the date of the ruling, with a copy thereof the Administrator. The petition for review shall be filed in accordance with Part 7 of this title.

(d) If a timely response to the Administrator's findings or ruling is not made or a timely petition for review is not filed, the Administrator's findings and/or ruling shall be final, except that with respect to debarment under the Davis-Bacon Act, the Administrator shall advise the Comptroller General of the Administrator's recommendation in accordance with § 5.12(a)(1). If a timely response or petition for review is filed, the findings and/or ruling of the Administrator shall be inoperative unless and until the decision is upheld by the Administrative Law Judge or the Wage Appeals Board.

§ 5.12 Debarment proceedings.

(a)(1) Whenever any contractor or subcontractor is found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of any of the applicable statutes listed in § 5.1 other than the Davis-Bacon Act, such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period not to exceed 3 years (from the date of publication by the Comptroller General of the name or names of said contractor or subcontractor on the ineligible list as provided below) to receive any contracts or subcontracts subject to any of the statutes listed in § 5.1.

(2) In cases arising under contracts covered by the Davis-Bacon Act, the Administrator shall transmit to the Comptroller General the names of the contractors or subcontractors and their responsible officers, if any (and any firms in which the contractors or subcontractors are known to have an interest), who have been found to have disregarded their obligations to employees, and the recommendation of the Secretary of Labor or authorized representative regarding debarment. The Comptroller General will distribute a list to all Federal agencies giving the names of such ineligible person or firms, who shall be ineligible to be awarded any contract or subcontract of the United States or the District of Columbia and any contract or subcontract subject to the labor standards provisions of the statutes listed in § 5.1.

(b)(1) In addition to cases under which debarment action is initiated pursuant to § 5.11, whenever as a result of an investigation conducted by the Federal agency or the Department of Labor, and where the Administrator finds reasonable cause to believe that a contractor or subcontractor has committed willful or aggravated violations of the labor standards provisions of any of the statutes listed in § 5.1 (other than the Davis-Bacon Act), or has committed violations of the Davis-Bacon Act which constitute a disregard of its obligations to employees or subcontractors under section 3(a) thereof, the Administrator shall notify by registered or certified mail to the last known address, the contractor or subcontractor and its responsible officers, if any (and any firms in which the contractor or subcontractor are known to have a substantial interest), of the finding. The Administrator shall afford such contractor or subcontractor and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under paragraph (a)(1) of this section or section 3(a) of the Davis-Bacon Act. The Administrator shall furnish to those notified a summary of the investigative findings. If the contractor or subcontractor or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a request shall be made by letter postmarked within 30 days of the date of the letter from the Administrator, and shall set forth any findings which are in dispute and the reasons therefor, including any affirmative defenses to be raised. Upon receipt of such request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and the response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute. In considering debarment under any of the statutes listed in § 5.1 other than the Davis-Bacon Act, the Administrative Law Judge shall issue an order concerning whether the contractor or subcontractor is to be debarred in accordance with paragraph (a)(1) of this section. In considering debarment under the Davis-Bacon Act, the Administrative Law Judge shall issue a recommendation as to whether the contractor or subcontractor should be debarred under section 3(a) of the Act.

(2) Hearings under this section shall be conducted in accordance with 29 CFR Part 6. If no hearing is requested within 30 days of receipt of the letter from the Administrator, the Administrator's findings shall be final, except with respect to recommendations regarding debarment under the Davis-Bacon Act, as set forth in paragraph (a)(2) of this section.

(c) Any person or firm debarred under § 5.12(a)(1) may in writing request removal from the debarment list after six months from the date of publication by the Comptroller General of such person or firm's name on the ineligible list. Such a request should be directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210, and shall contain a full explanation of the reasons why such person or firm should be removed from the ineligible list. In cases where the contractor or subcontractor failed to make full restitution to all underpaid employees, a request for removal will not be considered until such underpayments are made. In all other cases, the Administrator will examine the facts and circumstances surrounding the violative practices which caused the debarment, and issue a decision as to whether or not such person or firm has demonstrated a current responsibility to comply with the labor standards provisions of the statutes listed in § 5.1, and therefore should be removed from the ineligible list. Among the factors to be considered in reaching such a decision are the severity of the violations, the contractor or subcontractor's attitude towards compliance, and the past compliance history of the firm. In no case will such removal be effected unless the Administrator determines after an investigation that such person or firm is in compliance with the labor standards provisions applicable to Federal contracts and Federally assisted construction work subject to any of the applicable statutes listed in § 5.1 and other labor statutes providing wage protection, such as the Service Contract Act, the Walsh-Healey Public Contracts Act, and the Fair Labor Standards Act. If the request for removal is denied, the person or firm may petition for review by the Wage Appeals Board pursuant to 29

CFR Part 7.

(d)(1) Section 3(a) of the Davis-Bacon Act provides that for a period of three years from date of publication on the ineligible list, no contract shall be awarded to any persons or firms placed on the list as a result of a finding by the Comptroller General that such persons or firms have disregarded obligations to employees and subcontractors under that Act, and further, that no contract shall be awarded to "any firm, corporation, partnership, or association in which such persons or firms have an interest." Paragraph (a)(1) of this section similarly provides that for a period not to exceed three years from date of publication on the ineligible list, no contract subject to any of the statutes listed in § 5.1 shall be awarded to any contractor or subcontractor on the ineligible list pursuant to that paragraph, or to "any firm, corporation, partnership, or association" in which such contractor or subcontractor has a "substantial interest." A finding as to whether persons or firms whose names appear on the ineligible list have an interest (or a substantial interest, as appropriate) in any other firm, corporation, partnership, or association, may be made through investigation, hearing, or otherwise.

(2)(i) The Administrator, on his/her own motion or after receipt of a request for a determination pursuant to paragraph (d)(3) of this section may make a finding on the issue of interest (or substantial interest, as appropriate).

(ii) If the Administrator determines that there may be an interest (or substantial interest, as appropriate), but finds that there is insufficient evidence to render a final ruling thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with paragraph (d)(4) of this section.

(iii) If the Administrator finds that no interest (or substantial interest, as appropriate) exists, or that there is not sufficient information to warrant the initiation of an investigation, the requesting party, if any, will be so notified and no further action taken.

(iv)(A) If the Administrator finds that an interest (or substantial interest, as appropriate) exists, the person or firm affected will be notified of the Administrator's finding (by certified mail to the last known address), which shall include the reasons therefor, and such person or firm shall be afforded an opportunity to request that a hearing be held to render a decision on the issue.

(B) Such person or firm shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.

(C) If no hearing is requested within the time mentioned in paragraph (d)(2)(iv)(B) of this section, the Administrator's finding shall be final and the Administrator shall so notify the Comptroller General. If a hearing is requested, the ruling of the Administrator shall be inoperative unless and until the administrative law judge or the Wage Appeals Board issues an order that there is an interest (or substantial interest, as appropriate).

(3)(i) A request for a determination of interest (or substantial interest, as appropriate), may be made by any interested party, including contractors or prospective contractors and associations of contractor's representatives of employees, and interested Government agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

(ii) The request shall include a statement setting forth in detail why the petitioner believes that a person or firm whose name appears on the debarred bidders list has an interest (or a substantial interest, as appropriate) in any firm, corporation, partnership, or association which is seeking or has been awarded a contract of the United States or the District of Columbia, or which is subject to any of the statutes listed in § 5.1. No particular form is prescribed for the submission of a request under this section.

(4) *Referral to the Chief Administrative Law Judge.* The Administrator, on his/her own motion under paragraph (d)(2)(ii) of this section or upon a request for hearing where the Administrator determines that relevant facts are in dispute, will by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such hearings as may be necessary to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceedings shall be conducted in accordance with the procedures set forth at 29 CFR Part 6.

(5) *Referral to the Wage Appeals Board.* If the person or firm affected requests a hearing and the Administrator determines that relevant facts are not in dispute, the Administrator will refer the issue and the record compiled thereon to the Wage Appeals Board to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR Part 7.

[48 FR 19541, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983]

§ 5.13 Rulings and interpretations.

All questions relating to the application and interpretation of wage determinations (including the classifications therein) issued pursuant to Part 1 of this subtitle, of the rules contained in this part and in Parts 1 and 3, and of the labor standards provisions of any of the statutes listed in § 5.1 shall be referred to the Administrator for appropriate ruling or interpretation. The rulings and interpretations shall be authoritative and those under the Davis-Bacon Act may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). Requests for such rulings and interpretations should be addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

§ 5.14 Variations, tolerances, and exemptions from Parts 1 and 3 of this subtitle and this part.

The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of this part and those of Parts 1 and 3 of this subtitle whenever the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship. Variations, tolerances, and exemptions may not be made from the statutory requirements of any of the statutes listed in § 5.1 unless the statute specifically provides such authority.

§ 5.15 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.

(a) *General.* Upon his or her own initiative or upon the request of any Federal agency, the Secretary of Labor may provide under section 105 of the Contract Work Hours and Safety Standards Act reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of that Act whenever the Secretary finds such action to be necessary and proper in the public interest to prevent injustice, or undue hardship, or to avoid serious impairment of the conduct of Government business. Any request for such action by the Secretary shall be submitted in writing, and shall set forth the reasons for which the request is made.

(b) *Exemptions.* Pursuant to section 105 of the Contract Work Hours and Safety Standards Act, the following classes of contracts are found exempt from all provisions of that Act in order to prevent injustice, undue hardship, or serious impairment of Government business:

(1) Contracts of $2,000.00 or less.

(2) Purchases and contracts other than construction contracts in the aggregate amount of $2,500.00 or less. In arriving at the aggregate amount involved, there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising.

(3) Contract work performed in a

workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: A State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

(4) Agreements entered into by or on behalf of the Commodity Credit Corporation providing for the storing in or handling by commercial warehouses of wheat, corn, oats, barley, rye, grain sorghums, soybeans, flaxseed, rice, naval stores, tobacco, peanuts, dry beans, seeds, cotton, and wool.

(5) Sales of surplus power by the Tennessee Valley Authority to States, counties, municipalities, cooperative organization of citizens or farmers, corporations and other individuals pursuant to section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 8311).

(c) *Tolerances.* (1) The "basic rate of pay" under section 102 of the Contract Work Hours and Safety Standards Act may be computed as an hourly equivalent to the rate on which time-and-one-half overtime compensation may be computed and paid under section 7 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207), as interpreted in Part 778 of this title. This tolerance is found to be necessary and proper in the public interest in order to prevent undue hardship.

(2) Concerning the tolerance provided in paragraph (c)(1) of this section, the provisions of section 7(d)(2) of the Fair Labor Standards Act and § 778.7 of this title should be noted. Under these provisions, payments for occasional periods when no work is performed, due to vacations, and similar causes are excludable from the "regular rate" under the Fair Labor Standards Act. Such payments, therefore, are also excludable from the "basic rate" under the Contract Work Hours and Safety Standards Act.

(3) See § 5.8(c) providing a tolerance subdelegating authority to the heads of agencies to make appropriate adjustments in the assessment of liquidated damages totaling $500 or less under specified circumstances.

(4)(i) Time spent in an organized program of related, supplemental instruction by laborers or mechanics employed under bona fide apprenticeship or training programs may be excluded from working time if the criteria prescribed in paragraphs (c)(4)(ii) and (iii) of this section are met.

(ii) The apprentice or trainee comes within the definition contained in § 5.2(n).

(iii) The time in question does not involve productive work or performance of the apprentice's or trainee's regular duties.

(d) *Variations.* (1) In order to prevent undue hardship, a workday consisting of a fixed and recurring 24-hour period commencing at the same time on each calendar day may be used in lieu of the calendar day in applying the daily overtime provisions of the Act to the employment of firefighters or fireguards, under the following conditions: (i) Where such employment is under a platoon system requiring such employees to remain at or within the confines of their post of duty in excess of 8 hours per day in a standby or on-call status; and (ii) if the use of such alternate 24-hour day has been agreed upon between the employer and such employees or their authorized representatives before performance of the work; and (iii) provided that, in determining the daily and the weekly overtime requirements of the Act in any particular workweek of any such employee whose established workweek begins at an hour of the calendar day different from the hour when such agreed 24-hour day commences, the hours worked in excess of 8 hours in any such 24-hour day shall be counted in the established workweek (of 168 hours commencing at the same time each week) in which such hours are actually worked. (Approved by the Office of Management and Budget under OMB control numbers 1215-0140 and 1215-0017.)

(2) In the event of failure or refusal of the contractor or any subcontractor to comply with overtime pay requirements of the Contract Work Hours and Safety Standards Act, if the funds withheld by Federal agencies for the violations are not sufficient to pay fully both the unpaid wages due laborers and mechanics and the liquidated damages due the United States, the available funds shall be used first to compensate the laborers and mechanics for the wages to which they are entitled (or an equitable portion thereof when the funds are not adequate for this purpose); and the balance, if any, shall be used for the payment of liquidated damages.

(3) In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 620 to provide nursing home care of veterans, no contractor or subcontractor under such contract shall be deemed in violation of Section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to pay the overtime wages required by such section for work in excess of 8 hours in any calendar day or 40 hours in the workweek to any individual employed by an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 1½ times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended. (Approved by the Office of Management and Budget under OMB control numbers 1215-0140 and 1215-0017.)

(4) Any contractor or subcontractor performing on a government contract the principal purpose of which is the furnishing of fire fighting or suppression and related services, shall not be deemed to be in violation of Section 102 of the Contract Work Hour and Safety Standards Act for failing to pay the overtime compensation required by Section 102 of the Act in accordance with the basic rate of pay as defined in paragraph (c)(1) of this section, to any pilot or copilot of a fixed-wing or rotary-wing aircraft employed on such contract if:

(i) Pursuant to a written employment agreement between the contractor and the employee which is arrived at before performance of the work,

(A) The employee receives gross wages of not less than $300 per week regardless of the total number of hours worked in any workweek, and

(B) Within any workweek the total wages which an employee receives are not less than the wages to which the employee would have been entitled in that workweek if the employee were paid the minimum hourly wage required under the contract pursuant to the provisions of the Service Contract Act of 1965 and any applicable wage determination issued thereunder for all hours worked, plus an additional premium payment of one-half times such minimum hourly wage for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek;

(ii) The contractor maintains accurate records of the total daily and weekly hours of work performed by such employee on the government contract. In the event these conditions for the exemption are not met, the requirements of section 102 of the Contract Work Hours and Safety Standards Act shall be applicable to the contract from the date the contractor or subcontractor fails to satisfy the conditions until completion of the contract. (Approved by the Office of Management and Budget under OMB control number 1215-0017.)

§ 5.16 Training plans approved or recognized by the Department of Labor prior to August 20, 1975.

(a) Notwithstanding the provisions of § 5.5(a)(4)(ii) relating to the utilization of trainees on Federal and feder-

ally assisted construction, no contractor shall be required to obtain approval of a training program which, prior to August 20, 1975, was approved by the Department of Labor for purposes of the Davis-Bacon and Related Acts, was established by agreement of organized labor and management and therefore recognized by the Department, and/or was recognized by the Department under Executive Order 11246, as amended. A copy of the program and evidence of its prior approval, if applicable shall be submitted to the Employment and Training Administration, which shall certify such prior approval or recognition of the program. In every other respect, the provisions of § 5.5(a)(4)(ii)—including those relating to registration of trainees, permissible ratios, and wage rates to be paid—shall apply to these programs.

(b) Every trainee employed on a contract executed on and after August 20, 1975, in one of the above training programs must be individually registered in the program in accordance with Employment and Training Administration procedures, and must be paid at the rate specified in the program for the level of progress. Any such employee listed on the payroll at a trainee rate who is not registered and participating in a program certified by ETA pursuant to this section, or approved and certified by ETA pursuant to § 5.5(a)(4)(ii), must be paid the wage rate determined by the Secretary of Labor for the classification of work actually performed. The ratio of trainees to journeymen shall not be greater than permitted by the terms of the program.

(c) In the event a program which was recognized or approved prior to August 20, 1975, is modified, revised, extended, or renewed, the changes in the program or its renewal must be approved by the Employment and Training Administration before they may be placed into effect.

§ 5.17 Withdrawal of approval of a training program.

If at any time the Employment and Training Administration determines, after opportunity for a hearing, that the standards of any program, whether it is one recognized or approved prior to August 20, 1975, or a program subsequently approved, have not been complied with, or that such a program fails to provide adequate training for participants, a contractor will no longer be permitted to utilize trainees at less than the predetermined rate for the classification of work actually performed until an acceptable program is approved.

Subpart B—Interpretation of the Fringe Benefits Provisions of the Davis-Bacon Act

SOURCE: 29 FR 13465, Sept. 30, 1964, unless otherwise noted.

§ 5.20 Scope and significance of this subpart.

The 1964 amendments (Pub. L. 88-349) to the Davis-Bacon Act require, among other things, that the prevailing wage determined for Federal and federally-assisted construction include: (a) The basic hourly rate of pay; and (b) the amount contributed by the contractor or subcontractor for certain fringe benefits (or the cost to them of such benefits). The purpose of this subpart is to explain the provisions of these amendments. This subpart makes available in one place official interpretations of the fringe benefits provisions of the Davis-Bacon Act. These interpretations will guide the Department of Labor in carrying out its responsibilities under these provisions. These interpretations are intended also for the guidance of contractors, their associations, laborers and mechanics and their organizations, and local, State and Federal agencies, who may be concerned with these provisions of the law. The interpretations contained in this subpart are authoritative and may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 359). The omission to discuss a particular problem in this subpart or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor with respect to such problem or to constitute an administrative interpretation, practice, or enforcement policy. Questions on matters not fully covered by this subpart may be referred to the Secretary for interpretation as provided in § 5.12.

§ 5.21 [Reserved]

§ 5.22 Effect of the Davis-Bacon fringe benefits provisions.

The Davis-Bacon Act and the prevailing wage provisions of the related statutes listed in § 1.1 of this subtitle confer upon the Secretary of Labor the authority to predetermine, as minimum wages, those wage rates found to be prevailing for corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the area in which the work is to be performed. See paragraphs (a) and (b) of § 1.2 of this subtitle. The fringe benefits amendments enlarge the scope of this authority by including certain bona fide fringe benefits within the meaning of the terms "wages", "scale of wages", "wage rates", "minimum wages" and "prevailing wages", as used in the Davis-Bacon Act.

§ 5.23 The statutory provisions.

The fringe benefits provisions of the 1964 amendments to the Davis-Bacon Act are, in part, as follows:

(b) As used in this Act the term "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" shall include—

(1) The basic hourly rate of pay; and

(2) The amount of—

(A) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(B) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected,

for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits * * *.

§ 5.24 The basic hourly rate of pay.

"The basic hourly rate of pay" is that part of a laborer's or mechanic's wages which the Secretary of Labor would have found and included in wage determinations prior to the 1964 amendments. The Secretary of Labor is required to continue to make a separate finding of this portion of the wage. In general, this portion of the wage is the cash payment made directly to the laborer or mechanic. It does not include fringe benefits.

§ 5.25 Rate of contribution or cost for fringe benefits.

(a) Under the amendments, the Secretary is obligated to make a separate finding of the rate of contribution or cost of fringe benefits. Only the amount of contributions or costs for fringe benefits which meet the requirements of the act will be considered by the Secretary. These requirements are discussed in this subpart.

(b) The rate of contribution or cost is ordinarily an hourly rate, and will be reflected in the wage determination as such. In some cases, however, the contribution or cost for certain fringe benefits may be expressed in a formula or method of payment other than an hourly rate. In such cases, the Secretary may in his discretion express in the wage determination the rate of contribution or cost used in the formula or method or may convert it to an hourly rate of pay whenever he finds that such action would facilitate the administration of the Act. See § 5.5(a)(1)(i) and (iii).

§ 5.26 "* * * contribution irrevocably made * * * to a trustee or to a third person".

Under the fringe benefits provisions (Section 1(b)(2) of the Act) the amount of contributions for fringe

benefits must be made to a trustee or to a third person irrevocably. The "third person" must be one who is not affiliated with the contractor or subcontractor. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that in no event will the contractor or subcontractor be able to recapture any of the contributions paid in or any way divert the funds to his own use or benefit. Although contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this does not prevent return to the contractor or subcontractor of sums which he had paid in excess of the contributions actually called for by the plan, as where such excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained. For example, a benefit plan may provide for definite insurance benefits for employees in the event of the happening of a specified contingency such as death, sickness, accident, etc., and may provide that the cost of such definite benefits, either in full or any balance in excess of specified employee contributions, will be borne by the contractor or subcontractor. In such a case the return by the insurance company to the contractor or subcontractor of sums paid by him in excess of the amount required to provide the benefits which, under the plan, are to be provided through contributions by the contractor or subcontractor, will not be deemed a recapture or diversion by the employer of contributions made pursuant to the plan. (See Report of the Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

§ 5.27 "* * * fund, plan, or program".

The contributions for fringe benefits must be made pursuant to a fund, plan or program (sec. 1(b)(2)(A) of the act). The phrase "fund, plan, or program" is merely intended to recognize the various types of arrangements commonly used to provide fringe benefits through employer contributions. The phrase is identical with language contained in section 3(1) of the Welfare and Pension Plans Disclosure Act. In interpreting this phrase, the Secretary will be guided by the experience of the Department in administering the latter statute. (See Report of Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

§ 5.28 Unfunded plans.

(a) The costs to a contractor or subcontractor which may be reasonably anticipated in providing benefits of the types described in the act pursuant to an enforceable commitment to carry out a financially responsible plan or program, are considered fringe benefits within the meaning of the act (see 1(b)(2)(B) of the act). The legislative history suggests that these provisions were intended to permit the consideration of fringe benefits meeting, among others, these requirements and which are provided from the general assets of a contractor or subcontractor. (Report of the House Committee on Education and Labor, H. Rep. No. 308, 88th Cong., 1st Sess., p. 4.)

(b) No type of fringe benefit is eligible for consideration as a so-called unfunded plan unless:

(1) It could be reasonably anticipated to provide benefits described in the act;

(2) It represents a commitment that can be legally enforced;

(3) It is carried out under a financially responsible plan or program; and

(4) The plan or program providing the benefits has been communicated in writing to the laborers and mechanics affected. (See S. Rep. No. 963, p. 6.)

(c) It is in this manner that the act provides for the consideration of unfunded plans or programs in finding prevailing wages and in ascertaining compliance with the Act. At the same time, however, there is protection against the use of this provision as a means of avoiding the act's requirements. The words "reasonably anticipated" are intended to require that any unfunded plan or program be able to withstand a test which can perhaps be best described as one of actuarial soundness. Moreover, as in the case of other fringe benefits payable under the act, an unfunded plan or program must be "bona fide" and not a mere simulation or sham for avoiding compliance with the act. (See S. Rep. No. 963, p. 6.) The legislative history suggests that in order to insure against the possibility that these provisions might be used to avoid compliance with the act, the committee contemplates that the Secretary of Labor in carrying out his responsibilities under Reorganization Plan No. 14 of 1950, may direct a contractor or subcontractor to set aside in an account assets which, under sound actuarial principles, will be sufficient to meet the future obligation under the plan. The preservation of this account for the purpose intended would, of course, also be essential. (S. Rep. No. 963, p. 6.) This is implemented by the contractual provisions required by § 5.5(a)(1)(iv).

§ 5.29 Specific fringe benefits.

(a) The act lists all types of fringe benefits which the Congress considered to be common in the construction industry as a whole. These include the following: medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, vacation and holiday pay, defrayment of costs of apprenticeship or other similar programs, or other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits.

(b) The legislative history indicates that it was not the intent of the Congress to impose specific standards relating to administration of fringe benefits. It was assumed that the majority of fringe benefits arrangements of this nature will be those which are administered in accordance with requirements of section 302(c)(5) of the National Labor Relations Act, as amended (S. Rep. No. 963, p. 5).

(c) The term "other bona fide fringe benefits" is the so-called "open end" provision. This was included so that new fringe benefits may be recognized by the Secretary as they become prevailing. It was pointed out that a particular fringe benefit need not be recognized beyond a particular area in order for the Secretary to find that it is prevailing in that area. (S. Rep. No. 963, p. 6).

(d) The legislative reports indicate that, to insure against considering and giving credit to any and all fringe benefits, some of which might be illusory or not genuine, the qualification was included that such fringe benefits must be "bona fide" (H. Rep. No. 308, p. 4; S. Rep. No. 963, p. 6). No difficulty is anticipated in determining whether a particular fringe benefit is "bona fide" in the ordinary case where the benefits are those common in the construction industry and which are established under a usual fund, plan, or program. This would be typically the case of those fringe benefits listed in paragraph (a) of this section which are funded under a trust or insurance program. Contractors may take credit for contributions made under such conventional plans without requesting the approval of the Secretary of Labor under § 5.5(a)(1)(iv).

(e) Where the plan is not of the conventional type described in the preceding paragraph, it will be necessary for the Secretary to examine the facts and circumstances to determine whether they are "bona fide" in accordance with requirements of the act. This is particularly true with respect to unfunded plans. Contractors or subcontractors seeking credit under the act for costs incurred for such plans must request specific permission from the Secretary under § 5.5(a)(1)(iv).

(f) The act excludes fringe benefits which a contractor or subcontractor is obligated to provide under other Federal, State, or local law. No credit may

be taken under the act for the payments made for such benefits. For example, payment for workmen's compensation insurance under either a compulsory or elective State statute are not considered payments for fringe benefits under the Act. While each situation must be separately considered on its own merits, payments made for travel, subsistence or to industry promotion funds are not normally payments for fringe benefits under the Act. The omission in the Act of any express reference to these payments, which are common in the construction industry, suggests that these payments should not normally be regarded as bona fide fringe benefits under the Act.

§ 5.30 Types of wage determinations.

(a) When fringe benefits are prevailing for various classes of laborers and mechanics in the area of proposed construction, such benefits are includable in any Davis-Bacon wage determination. Illustrations, contained in paragraph (c) of this section, demonstrate some of the different types of wage determinations which may be made in such cases.

(b) Wage determinations of the Secretary of Labor under the act do not include fringe benefits for various classes of laborers and mechanics whenever such benefits do not prevail in the area of proposed construction. When this occurs the wage determination will contain only the basic hourly rates of pay, that is only the cash wages which are prevailing for the various classes of laborers and mechanics. An illustration of this situation is contained in paragraph (c) of this section.

(c) Illustrations:

Classes	Basic hourly rates	Fringe benefits payments				
		Health and welfare	Pensions	Vacations	Apprenticeship program	Others
Laborers	$3.25					
Carpenters	4.00	$0.15				
Painters	3.90	15	$0.10	$0.20		
Electricians	4.85	10	15			
Plumbers	4.95	15	20		$0.05	
Ironworkers	4.60			10		

(It should be noted this format is not necessarily in the exact form in which determinations will issue; it is for illustration only.)

§ 5.31 Meeting wage determination obligations.

(a) A contractor or subcontractor performing work subject to a Davis-Bacon wage determination may discharge his minimum wage obligations for the payment of both straight time wages and fringe benefits by paying in cash, making payments or incurring costs for "bona fide" fringe benefits of the types listed in the applicable wage determination or otherwise found prevailing by the Secretary of Labor, or by a combination thereof.

(b) A contractor or subcontractor may discharge his obligations for the payment of the basic hourly rates and the fringe benefits where both are contained in a wage determination applicable to his laborers or mechanics in the following ways:

(1) By paying not less than the basic hourly rate to the laborers or mechanics and by making the contributions for the fringe benefits in the wage determinations, as specified therein. For example, in the illustration contained in paragraph (c) of § 5.30, the obligations for "painters" will be met by the payment of a straight time hourly rate of not less than $3.90 and by contributing not less than at the rate of 15 cents an hour for health and welfare benefits, 10 cents an hour for pensions, and 20 cents an hour for vacations; or

(2) By paying not less than the basic hourly rate to the laborers or mechanics and by making contributions for "bona fide" fringe benefits in a total amount not less than the total of the fringe benefits required by the wage determination. For example, the obligations for "painters" in the illustration in paragraph (c) of § 5.30 will be met by the payment of a straight time hourly rate of not less than $3.90 and by contributions of not less than a total of 45 cents an hour for "bona fide" fringe benefits; or

(3) By paying in cash directly to laborers or mechanics for the basic hourly rate and by making an additional cash payment in lieu of the required benefits. For example, where an employer does not make payments or incur costs for fringe benefits, he would meet his obligations for "painters" in the illustration in paragraph (c) of § 5.30, by paying directly to the painters a straight time hourly rate of not less than $4.35 ($3.90 basic hourly rate plus 45 cents for fringe benefits); or

(4) As stated in paragraph (a) of this section, the contractor or subcontractor may discharge his minimum wage obligations for the payment of straight time wages and fringe benefits by a combination of the methods illustrated in paragraphs (b)(1) thru (3) of this section. Thus, for example, his obligations for "painters" may be met by an hourly rate, partly in cash and partly in payments or costs for fringe benefits which total not less than $4.35 ($3.90 basic hourly rate plus 45 cents for fringe benefits). The payments in such case may be $4.10 in cash and 25 cents in payments or costs in fringe benefits. Or, they may be $3.75 in cash and 60 cents in payments or costs for fringe benefits.

[30 FR 13136, Oct. 15, 1965]

§ 5.32 Overtime payments.

(a) The act excludes amounts paid by a contractor or subcontractor for fringe benefits in the computation of overtime under the Fair Labor Standards Act, the Contract Work Hours and Safety Standards Act, and the Walsh-Healey Public Contracts Act whenever the overtime provisions of any of these statutes apply concurrently with the Davis-Bacon Act or its related prevailing wage statutes. It is clear from the legislative history that in no event can the regular or basic rate upon which premium pay for overtime is calculated under the aforementioned Federal statutes be less than the amount determined by the Secretary of Labor as the basic hourly rate (i.e. cash rate) under section 1(b)(1) of the Davis-Bacon Act. (See S. Rep. No. 963, p. 7.) Contributions by employees are not excluded from the regular or basic rate upon which overtime is computed under these statutes; that is, an employee's regular or basic straight-time rate is computed on his earnings before any deductions are made for the employee's contributions to fringe benefits. The contractor's contributions or costs for fringe benefits may be excluded in computing such rate so long as the exclusions do not reduce the regular or basic rate below the basic hourly rate contained in the wage determination.

(b) The legislative report notes that the phrase "contributions irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program" was added to the bill in Committee. This language in essence conforms to the overtime provisions of section 7(d)(4) of the Fair Labor Standards Act, as amended. The intent of the committee was to prevent any avoidance of overtime requirements under existing law. See H. Rep. No. 308, p. 5.

(c)(1) The act permits a contractor or subcontractor to pay a cash equivalent of any fringe benefits found pre-

vailing by the Secretary of Labor. Such a cash equivalent would also be excludable in computing the regular or basic rate under the Federal overtime laws mentioned in paragraph (a). For example, the W construction contractor pays his laborers or mechanics $3.50 in cash under a wage determination of the Secretary of Labor which requires a basic hourly rate of $3 and a fringe benefit contribution of 50 cents. The contractor pays the 50 cents in cash because he made no payments and incurred no costs for fringe benefits. Overtime compensation in this case would be computed on a regular or basic rate of $3.00 an hour. However, in some cases a question of fact may be presented in ascertaining whether or not a cash payment made to laborers or mechanics is actually in lieu of a fringe benefit or is simply part of their straight time cash wage. In the latter situation, the cash payment is not excludable in computing overtime compensation. Consider the examples set forth in paragraphs (c)(2) and (3) of this section.

(2) The X construction contractor has for some time been paying $3.25 an hour to a mechanic as his basic cash wage plus 50 cents an hour as a contribution to a welfare and pension plan. The Secretary of Labor determines that a basic hourly rate of $3 an hour and a fringe benefit contribution of 50 cents are prevailing. The basic hourly rate or regular rate for overtime purposes would be $3.25, the rate actually paid as a basic cash wage for the employee of X, rather than the $3 rate determined as prevailing by the Secretary of Labor.

(3) Under the same prevailing wage determination, discussed in paragraph (c)(2) of this section, the Y construction contractor who has been paying $3 an hour as his basic cash wage on which he has been computing overtime compensation reduces the cash wage to $2.75 an hour but computes his costs of benefits under section 1(b)(2)(B) as $1 an hour. In this example the regular or basic hourly rate would continue to be $3 an hour. See S. Rep. No. 963, p. 7.

* U.S. Government Printing Office : 1984 - 461-506/25945

APPENDIX D

ALL AGENCY MEMORANDA
NOS. 130 *AND* 131

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Wage and Hour Division
WASHINGTON, D.C. 20210

MAR 17 1978

ALL AGENCY MEMORANDUM NO. 130

TO: ALL GOVERNMENT CONTRACTING AGENCIES AND THE DISTRICT OF COLUMBIA

FROM: XAVIER M. VELA
ADMINISTRATOR

SUBJECT: Application Of The Standard Of Comparison "Projects Of A Character Similar" Under The Davis-Bacon And Related Acts

The purpose of this memorandum is to set forth present policies of the Wage and Hour Division with regard to the determination of "projects of a character similar to the contract work" for wage determination purposes. The guidelines contained in the memorandum are to be used by the contracting agencies in selecting the proper schedule(s) of wage rates from the Federal Register and in instructing contractors regarding the application of multiple schedules. This memorandum supersedes All Agency Memorandum No. 68 (July 19, 1966).

The Davis-Bacon and related Acts require the Secretary of Labor to determine the prevailing wage rates for corresponding classes of laborers and mechanics on projects in the area which are of a "character similar" to the proposed contract work to which the determination will be applied. The Department's Wage Appeals Board in a decision specifically relating to high-rise apartment buildings (WAB Case No. 76-11, dated January 27, 1977) stated:

> The test of whether a project is of a character similar to another project refers to the nature of the project itself in a construction sense, not to whether union or nonunion wages are paid or whether union or nonunion workers are employed. Since the 1935 amendments to the Davis-Bacon Act, the statutory focus has always been on the character of the project itself rather than on who was employed on the project or how much he or she was being paid.

Again, in a decision relating to a water treatment plant project (WAB Case No. 77-20, dated September 30, 1977), the Board stated: "When it is clear from the nature of the project itself in a construction sense that it is to be categorized as either building, heavy, or highway construction it is not necessary to resort to an area practice survey to determine the appropriate categorization of the project."

Generally construction projects are classified as either Building, Heavy, Highway or Residential. 1/ Below are descriptions of these classifications with an illustrative listing of the kinds of projects that are generally included within the classification. Contracting agencies should utilize these descriptions and illustrations in carrying out their responsibilities, to insure a uniform and consistent administration of the Davis-Bacon and related prevailing wage statutes. The advertised and contract specifications should identify as specifically as possible the segments of work to which the schedules will apply. Note, however, that the descriptions and illustrations are guides. Contracting agencies should seek a determination from the Department of Labor on close questions or when the appropriate classification is in dispute. In making this determination where a project does not readily fall within any category, the Department of Labor may consider wages being paid on analogous projects as an indication of the proper category. As stated by the Wage Appeals Board in WAB Case No. 77-23, dated December 30, 1977: "Wages, however, are only one indication. It is also necessary to look at other characteristics of the project, including the construction techniques, the material and equipment being used on the project, the type of skills called for on the project work and other similar factors which would indicate the proper category of construction."

BUILDING CONSTRUCTION

Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. It includes all construction of such structures, the installation of utilities and the installation of equipment, both above and below grade

1/ Generally, for wage determination purposes, a project consists of all construction necessary to complete a facility regardless of the number of contracts involved so long as all contracts awarded are closely related in purpose, time and place. For example, demolition or site work preparatory to building construction is considered a part of the building project for wage determination purposes. Where a project, such as a water and sewage treatment plant, includes construction items that in themselves would be otherwise classified, a multiple classification may be justified if such construction items are a substantial part of the project. Further, however, a separate classification would not apply if such construction items are merely incidental to the total project to which they are closely related in function. For example, water or sewer line work which is a part of a building project would not generally be separately classified. Where construction is "incidental" in function, 20 percent of project cost is used as a rough guide for determining when construction is also "incidental" in amount to the overall project.

level, as well as incidental grading, utilities and paving. Additionally, such structures need not be "habitable" to be building construction. The installation of heavy machinery and/or equipment does not generally change the project's character as a building.

Examples

Alterations and additions to buildings
Apartment buildings (5 stories and above)
Arenas (enclosed)
Auditoriums
Automobile parking garages
Banks and financial buildings
Barracks
Churches
City halls
Civic centers
Commercial buildings
Court houses
Detention facilities
Dormitories
Farm buildings
Fire stations
Hospitals
Hotels
Industrial buildings
Institutional buildings
Libraries
Mausoleums
Motels
Museums
Nursing and convalescent facilities
Office buildings
Out-patient clinics
Passenger and freight terminal buildings
Police stations
Post offices
Power plants
Prefabricated buildings
Remodeling buildings
Renovating buildings
Repairing buildings
Restaurants
Schools
Service stations
Shopping centers
Stores
Subway stations
Theaters
Warehouses
Water and sewage treatment plants (buildings only)

RESIDENTIAL CONSTRUCTION

Residential projects for Davis-Bacon purposes are those involving the construction, alteration, or repair of single family houses or apartment buildings of no more than four(4) stories in height. This includes all incidental items such as site work, parking areas, utilities, streets and sidewalks.

Examples

Town or row houses
Apartment buildings (4 stories or less)
Single family houses
Mobile home developments
Multi-family houses
Married student housing

HEAVY CONSTRUCTION

Heavy projects are those projects that are not properly classified as either "building", "highway", or "residential". Unlike these classifications, heavy construction is not a homogeneous classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules issued. For example, separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.

Examples

Antenna towers
Bridges (major bridges designed for commercial navigation) 2/
Breakwaters
Caissons (other than building or highway)
Canals
Channels
Channel cut-offs
Chemical complexes or facilities (other than buildings)
Cofferdams
Coke ovens
Dams
Demolition (not incidental to construction)
Dikes
Docks
Drainage projects

2/ Major bridges contain elements of both heavy and highway construction. See WAB Case No. 77-2 (October 21, 1977)

Dredging projects
Electrification projects (outdoor)
Flood control projects
Industrial incinerators (other than building)
Irrigation projects
Jetties
Kilns
Land drainage (not incidental to other construction)
Land leveling (not incidental to other construction)
Land reclamation
Levees
Locks, waterways
Oil refineries (other than buildings)
Pipe lines
Ponds
Pumping stations (prefabricated drop-in units - not buildings)
Railroad construction
Reservoirs
Revetments
Sewage collection and disposal lines
Sewers (sanitary, storm, etc)
Shoreline maintenance
Ski tows
Storage tanks
Swimming pools (outdoor)
Subways (other than buildings)
Tipples
Tunnels
Unsheltered piers and wharves
Viaducts (other than highway)
Water mains
Waterway construction
Water supply lines (not incidental to building)
Water and sewage treatment plants (other than buildings)
Wells

HIGHWAY CONSTRUCTION

Highway projects include the construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction.

Examples

Alleys
Base courses
Bituminous treatments
Bridle paths
Concrete pavement
Curbs
Excavation and embankment (for road construction)

Fencing (highway)
Grade crossing elimination (overpasses or underpasses)
Guard rails on highway
Highway signs
Highway bridges (overpasses; underpasses; grade separation)
Medians
Parking lots
Parkways
Resurfacing streets and highways
Roadbeds
Roadways
Runways
Shoulders
Stabilizing courses
Storm sewers incidental to road construction
Street Paving
Surface courses
Taxiways
Trails

In applying these guidelines contracting agencies are reminded that they have the authority only in the first instance to designate the appropriate wage schedule(s) from the Federal Register, and to determine the application of multiple schedules issued by the Wage and Hour Division in project wage determinations. Any questions regarding the application of the guidelines set forth in this memordum to a particular project or any disputes regarding the application of the wage schedules are to be referred to the Wage and Hour Division for resolution, and the instructions of the Wage and Hour Division are to be observed in all instances. Furthermore, where multiple schedules are issued by the Wage and Hour Division, they must be utilized in the contract specifications unless the agency requests and receives a change in the wage determination from the Wage and Hour Division. To ensure that appropriate schedules are issued, contracting agencies are advised to provide the Wage and Hour Division in their requests for wage determinations with a sufficiently specific description of the project to be able to determine its character.

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Wage and Hour Division
WASHINGTON, D.C. 20210

JUL 14 1978

ALL AGENCY MEMORANDUM NO. 131

TO: ALL GOVERNMENT CONTRACTING AGENCIES AND THE DISTRICT OF COLUMBIA

FROM: XAVIER M. VELA
ADMINISTRATOR

SUBJECT: Clarification of All Agency Memorandum No. 130

The purpose of this memorandum is to clarify Memorandum No. 130, dated March 17, 1978. Although the Wage and Hour Division has received a positive reaction from most contracting agencies who work regularly with the issues raised, some questions have arisen over specific aspects of the memorandum.

Memorandum No. 130 is intended to be a guide to categories of projects in a construction sense and is to be applied uniformly by the contracting agencies in the absence of specific direction on the wage determination or advice by the Wage and Hour Division. However, the Wage and Hour Division is aware that in some circumstances the category of a project may appear to be unclear or a literal application of the guidelines may be inappropriate. For example, questions frequently arise over pumping stations, which may vary greatly in sophistication and construction techniques. Therefore, if the contracting agency has any questions regarding application of the guidelines in a specific case, or if a question is raised with the agency by interested parties, the issue of application of the wage rate schedules should be referred to the Wage and Hour Division. This referral should include a complete description of the project, any evidence available of area practice regarding wages paid on similar projects, comments by interested parties which may have been submitted to the agency, and the agency's recommendation. Where the nature of the project in a construction sense is not clear, area practice regarding wages paid will be taken into consideration together with other factors such as construction techniques and classifications of workers required on the project. See WAB Case No. 77-23 (December 30, 1977).

Questions have also arisen regarding the circumstances in which multiple schedules of wage rates are issued for a project which includes construction items that in themselves would be

different categories of construction. Because of the complexities in application of multiple schedules, the contracting agency should consult with the Wage and Hour Division whenever it appears that more than one schedule of rates is appropriate for a project, unless the wage decision(s) as issued indicates that multiple schedules are applicable.

Generally, multiple schedules are issued if the construction items are substantial in relation to project cost -- more than approximately 20 percent. Only one schedule is issued if construction items are "incidental" in function to the over-all character of a project (e.g., paving of parking lots or an access road on a building project), and if there is not a substantial amount of construction in the second category. Note, however, that 20 percent is a rough guide. For example, when a project is very large, items of work of a different character may be sufficiently substantial to warrant a separate schedule even though these items of work do not specifically amount to 20 percent of the total project cost.

Although the example given is that of incidental paving and utilities, the same principles are applied to other categories, such as building construction on a heavy or highway project. Thus, in a recent case, the Wage and Hour Division deleted the building schedule when it learned that a small building under a contract primarily for runway construction was approximately 4 percent of project cost. Another example of general interest is the applicability of the building schedule to a building in a rest area of a highway. In this situation, applying the principles of MARTA, WAB Case No. 75-5, for extensive projects, the project for comparison purposes is the rest area itself, rather than the entire highway.

These principles regarding incidental construction are not in conflict with the Wage and Hour Division's recognition in certain circumstances (WAB Case No. 77-19) of a clearly established practice of paying different wage rates on specific portions of building projects. For example, different rates may be paid for incidental paving and utilities than are paid in the construction of buildings on building projects. These projects are building projects, and the wage rates issued by the Wage and Hour Division for incidental paving and utilities reflect wages paid on such work on building projects.

Contracting agencies are reminded of their responsibility to advise contractors on the application of multiple wage schedules issued by the Wage and Hour Division or obtained by the agency from the Federal Register. If any questions arise regarding application of the schedules to the project in accordance with these guidelines, or if it appears that a

wage schedule may have been issued in error, a ruling should be requested from the Wage and Hour Division. On these issues, as in all other matters in the administration of the Davis-Bacon and related acts, we will continue to work cooperatively with the contracting agencies. For convenience, Memorandum No. 130 is attached.

Attachment

APPENDIX E

REQUIRED NATIONAL ORGANIZATION SURVEY CONTACTS

REQUIRED NATIONAL ORGANIZATION SURVEY CONTACTS

1,2,3,4 International President
International Brotherhood
of Electrical Workers
1125 - 15th Street, NW
Washington, DC 20005

1,2,3,4 General President
United Brotherhood of
Carpenters & Joiners of
America
101 Constitution Avenue, NW
Washington, DC 20001

1,2,4 General President
International Association of
Heat & Frost Insulators &
Asbestos Workers
1300 Connecticut Ave., NW
Washington, DC 20036

1,2,4 International President
International Brotherhood of
Boilermakers
Room 700
400 First Street, NW
Washington, DC 20001

1,2,3,4 General President
Laborers' International Union
of North America
905 - 16th Street, NW
Washington, DC 20006

2,3 Director
National Joint Heavy &
Highway Construction
Committee
111 Massachusetts Ave., NW
Washington, DC 20001

1,2,3,4 General President
Operative Plasterers' &
Cement Masons' International
Association of the United
States and Canada
1125 - 17th Street, NW
Washington, DC 20036

1,2,4 General President
United Association of
Journeymen & Apprentices of
the Plumbing & Pipe Fitting
Industry of the United States
& Canada
901 Massachusetts Avenue, NW
Washington, DC 20001

1,4 International President
United Union of Roofers,
Waterproofers & Allied
Workers
1125 - 17th Street, NW
Washington, DC 20036

1,2,3,4 Director
National Division of Building
Material & Construction
Drivers
25 Louisiana Ave., NW
Washington, DC 20001

1,2,3,4 General President
International Union of
Operating Engineers
1125 - 17th Street, NW
Washington, DC 20036

1,2,3,4 General President
International Brotherhood of
Painters and Allied Trades
1750 New York Avenue, NW
Washington, DC 20006

1,2,3,4 General President
International Association of
Bridge, Structural and
Ornamental Iron Workers
1750 New York Avenue, NW
Washington, DC 20006

1,2,3,4 Assistant to the President
Building and Construction
Trades Department, AFL-CIO
815 - 16th Street, NW
Room 603
Washington, DC 20006

February 1986

1,4 General President
Sheet Metal Workers'
International Association
1750 New York Avenue, NW
Washington, DC 20006

1,2,4 General President
International Union of Tile
Marble, Terrazzo, Finishers
& Shopmen
801 North Pitt Street
Suite 116
Alexandria, VA 22314

1,2,3,4 Labor Relations Branch
The Associated General
Contractors of America, Inc.
20th & E Street, NW
Washington, DC 20006

3 Executive Vice President
American Road & Transportation
Builders Assocation
525 School Street, NW
Washington, DC 20024

1,2,3,4 Executive Director
Associated Landscape
Contractors of America
405 N. Washington St.
Falls Church, VA 20046

1,2,3,4 Executive Vice President
National Electrical
Contractors Association
7315 Wisconsin Avenue, NW
Washington, DC 20014

1,2,3,4 Assistant Director
Government Relations
Associated Builders and
Contractors, Inc.
729 - 15th Street, NW
Washington, DC 20005

1,2,3,4 Executive Director
National Association of
Minority Contractors
806 15th Street, NW
Washington, DC 20005

1,2,3,4 Executive Director
National Utility Contractors
Association
1235 Jefferson Davis Highway
Arlington, VA 22202

2,3 Executive Director
National Railroad Construction
& Maintenance Association,
Inc.
6989 Washington Avenue So.
Suite 200
Edina, MN 55435

1,2,3,4 Executive Director
American Subcontractors
Association
1004 Duke Street
Alexandria, VA 22314

1,4 Director
Labor Relations
National Association of
Home Builders
15th and M Streets, NW
Washington, DC 20005

1,2,4 Director
Education and Technical
Services
American Fire Sprinklers
Association, Inc.
11325 Pegasus
Suite E-109
Dallas, TX 75238

1,2,3,4 Executive Director
Independent Electrical
Contractors
1101 Connecticut Ave., NW
Washington, DC 20036

February 1986

1,2,3,4 Mechanical Contractors Association of America, Inc.
Suite 120
5410 Grosvenor Lane
Bethesda, MD 20418-2122

1,2,3,4 President
International Union of Bricklayers & Allied Craftsmen
815 - 15th Street, NW
Washington, DC 20005

1,2,3,4 Executive Director
National Association of Demolition Contractors
4415 W. Harrison Street
Hillside, IL 60162

1,4 Executive Director
National Association of Elevator Contractors
2964 Peachtree Road, NW
Suite 665
Atlanta, GA 30305

1,2,4 Executive Vice President
National Roofing Contractors Association
8600 Bryn Mawr Avenue
Chicago, IL 60631

1,2,4 Business Manager
Road Sprinkler Fitters L 669
7411 Riggs Road
Adelphi, MD 20783

1,2,3,4 Executive Vice President
Mason Contractors Association of America
17W601 - 14th Street
Oakbrook Terrace, IL 60181

1,2,4 General Manager
Metal Building Manufacturers Association
1230 Keith Building
Cleveland, OH 44115

1,2,3,4 Executive Director
Painting and Decorating Contractors of America
7223 Lee Highway
Falls Church, VA 22046

1,2,3,4 Executive Vice President
Power and Communication Contractors Association
Suite 3
700 - 7th Street, SW
Washington, DC 20024

1,4 Executive Director
Tile Contractors Association of America
112 North Alfred Street
Alexandria, VA 22314

1,4 General President
International Union of Elevator Constructors
Clark Building, Suite 530
5565 Sterrett Place
Columbia, MD 21044

Key

1 - Contact these organizations when conducting building construction surveys.
2 - Contact these organizations when conducting heavy construction surveys.
3 - Contact these organizations when conducting highway construction surveys.
4 - Contact these organizations when conducting residential construction surveys.

February 1986